

CHARTERS AND THE USE OF THE WRITTEN WORD
IN MEDIEVAL SOCIETY

UTRECHT STUDIES IN MEDIEVAL LITERACY

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CHARTERS AND THE USE OF THE WRITTEN WORD IN MEDIEVAL SOCIETY

Edited by
Karl Heidecker



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Preface

This volume contains the proceedings of two gatherings held in 1999: an Utrecht Symposium on Medieval Literacy, *Charters: the Development of Writing in Medieval Society* held on 29 April 1999 in Utrecht, and three consecutive sessions on *Charters and the Use of the Written Word* during the International Medieval Congress at Leeds on 12 July 1999. The subject of these gatherings, both organized by the Utrecht Pionier Project Verschriftelijking, was the development of writing in medieval society. There have been periods of growth and of decrease in the quantity of writing produced in the medieval centuries. The present volume, however, is concerned rather with qualitative developments. Which developments can be distinguished in the roles played by writing in medieval societies? In which fields writing was used and by whom? Why did these changes take place? When attempting to answer these questions, one has to confront basic questions about the sources at our disposal. Why were documents written? Why were they preserved and in which form? As a consequence, the contributions are clearly source-oriented. Charters, the sources to which most attention is devoted, have been continuously present all through the Middle Ages. Moreover, they have had an impact on many "sectors" of society. Since it came into being, the auxiliary science of diplomatics has been of outstanding value for our understanding of many historical problems. This volume aims to show its value in the study of the development of writing and its uses. Each contributor examines a specific period and geographical area. Together, the papers aim to provide insights into the current state of research and the different methods employed in the various research traditions represented by their authors.

For valid reasons, David Bates and Thomas Ertl have not been able to prepare their papers for publication. The contributions of Karl Heidecker will be elaborated and published as a monograph. We are delighted that at the last minute David Postles has been willing to contribute to this collection. Unfortu-

nately we have not been able, for simple reasons of logistics, to cover all of Europe. Notably southern Europe with its important tradition of diplomacy and Scandinavia are absent from this volume; the absence of other countries and periods is equally obvious.

We want to thank all those present at the two gatherings for taking part in the lively discussions. Our special thanks go to Patrick Geary for acting as respondent to the papers of the Leeds sessions, to Georges Declercq as respondent to the Utrecht symposium, and to Michael Clanchy for introducing the Leeds sessions. In the whole process of preparing and organizing the conferences and editing this volume Marco Mostert and Anna Adamska have been involved in an essential manner. Moreover, we have been more than fortunate that Michael Clanchy has consented to act as godfather on behalf of the series' editorial board. Not only did his pioneering studies on charters and literacy inspire many of the contributions to this volume, he has also consented to correct and improve the technical language required for writing on diplomacy in English. His efforts went far beyond what might reasonably be expected of a member of the editorial board of any series. The contributions of Mark Meriowsky, Philippe Depreux, Ivan Hlaváček and Laurent Morelle have been translated into English.

Finally, we want to thank the International Medieval Congress at Leeds for providing us with the opportunity to organise the three sessions mentioned above. Similarly, our thanks go to the Research Institute for History and Culture of the Faculty of Letters of Utrecht University (OGC) and the Netherlands Foundation for Scientific Research (NWO) for their aid in organising the Utrecht conference.

Utrecht, 30 June 2000

Abbreviations

<i>ACM</i>	<i>Gli atti del Comune di Milano fino all'anno MCCXVI</i> , ed. C. MANARESI, (Milan, 1919).
<i>ACM sec. XIII 1</i>	<i>Gli atti del Comune di Milano nel secolo XIII, 1, 1217-1250</i> , ed. M.F. BARONI (Milan, 1976).
<i>ACM sec. XIII 2.1</i>	<i>Gli atti del Comune di Milano nel secolo XIII, 2.1, 1251-1262</i> , ed. M.F. BARONI and R. PERELLI CIPPO (Alessandria, 1982).
<i>ACM sec. XIII 2.2</i>	<i>Gli atti del Comune di Milano nel secolo XIII, 2.2, 1262-1276</i> , ed. M.F. BARONI and R. PERELLI CIPPO (Alessandria, 1987).
<i>Actes de Charles le Chauve</i>	<i>Recueil des Actes de Charles II le Chauve, roi de France</i> , ed. G. TESSIER, 3 vols. (Paris, 1943-1955: <i>Chartes et diplômes relatifs à l'histoire de France</i>).
<i>AfD</i>	<i>Archiv für Diplomatie, Schriftgeschichte, Siegel- und Wappenkunde</i> 1- (1955-).
<i>AÖG</i>	<i>Archiv für österreichische Geschichte</i> 1- (1848-).
<i>BEC</i>	<i>Bibliothèque de l'École des Chartes</i> 1- (1839-).
<i>BM²</i>	J.Fr. BÖHMER, E. MÜHLBACHER a.o., <i>Regesta Imperii</i> , 1, 2nd ed. (Hildesheim, 1966).
<i>BNF</i>	Bibliothèque Nationale de France.
<i>Cart. Mâcon</i>	<i>Cartulaire de Saint-Vincent de Mâcon connu sous le nom de livre enchainé</i> , ed. M.-C. RAGUT (Mâcon, 1864).
<i>CDB</i>	<i>Codex diplomaticus et epistolaris regni Bohemiae</i> , ed. G. FRIEDRICH a.o. (Prague, 1904-).
<i>Charters David I</i>	<i>The Charters of King David I: The Written Acts of David I King of Scots, 1124-1153 and of his son Henry Earl of Northumberland, 1139-52</i> , ed. G.W.S. BARROW (Woodbridge, 1999).
<i>Chartes Cluny</i>	<i>Recueil des chartes de l'abbaye de Cluny</i> , ed. A. BERNARD and A. BRUEL, 6 vols. (Paris, 1876-1903).

DA	<i>Deutsches Archiv für Erforschung des Mittelalters</i> 1- (1937-).
FRA	<i>Fontes Rerum Austriacarum</i> (Vienna, 1849-).
FSt	<i>Frühmittelalterliche Studien</i> 1- (1967-).
JL	Ph. JAFFÉ, <i>Regesta pontificum romanorum ab condita ecclesia ad annum post Christum natum 1198</i> , 2nd edn. by S. LOEWENFELD (Leipzig, 1888).
KDM I	<i>Kodeks dyplomatyczny Małopolski</i> , 1, ed. F. PIEKOSIŃSKI (Cracow, 1876).
KDP I, III	<i>Kodeks dyplomatyczny Polski</i> , 1, 3, ed. L. RZYSZCZEWSKI, A. MUCZKOWSKI and J. BARTOSZEWICZ (Warsaw, 1847).
KDW I	<i>Kodeks dyplomatyczny Wielkopolski</i> , 1 (Poznań, 1887).
LdM	<i>Lexikon des Mittelalters</i> , 10 vols. (Munich, 1977-1999).
MGH	<i>Monumenta Germaniae Historica</i> .
Cap.	<i>Capitularia regum Francorum</i> , 1, ed. A. BORETIUS (Hannover, 1883); 2, ed. A. BORETIUS and V. KRAUSE, (Hannover, 1897).
Conc.	<i>Concilia</i> (Hannover and Leipzig, 1893-).
Const.	<i>Constitutiones et acta publica imperatorum et regum</i> (Hannover and Leipzig, then Weimar, 1893-).
DD	<i>Diplomata</i> .
D Arn.	<i>Die Urkunden Arnolfs</i> , ed. P. KEHR (Berlin, 1955: <i>Diplomata regum Germaniae ex stirpe Karolinorum</i> 3).
D H I	<i>Die Urkunden Heinrich I.</i> , ed. Th. SICKEL (Hannover, 1884: <i>Diplomata regum et imperatorum Germaniae</i> 1).
D KdGr	<i>Die Urkunden Karls des Großen</i> , ed. E. MÜHLBACHER (Hannover, 1906: <i>Diplomata Karolinorum</i> 1).
D K III	<i>Die Urkunden Karls III.</i> , ed. P. KEHR (Berlin, 1937: <i>Diplomata regum Germaniae ex stirpe Karolinorum</i> 2).
D Ko III	<i>Die Urkunden Konrads III.</i> , ed. Fr. HAUSMANN (Vienna, Cologne and Graz, 1969: <i>Diplomata regum et imperatorum Germaniae</i> 9).
D LdD	<i>Die Urkunden Ludwigs des Deutschen</i> , ed. P. KEHR (Berlin, 1932-34: <i>Diplomata regum Germaniae ex stirpe Karolinorum</i> 1).
D LK	<i>Die Urkunden Ludwigs des Kindes</i> , ed. Th. SCHIEFFER (Berlin, 1960: <i>Diplomata regum Germaniae ex stirpe Karolinorum</i> 4).
D Lot I	<i>Die Urkunden Lothars I.</i> , ed. Th. SCHIEFFER (Berlin and Zurich, 1966: <i>Diplomata Karolinorum</i> 3).
D Mer.	<i>Diplomata regum Francorum e stirpe Merowingica</i> , ed. K. PERTZ (Hannover, 1872: <i>Diplomata imperii</i> 1).
D O I	<i>Die Urkunden Otto I.</i> , ed. Th. SICKEL (Hannover, 1884: <i>Diplomata regum et imperatorum Germaniae</i> 1).

<i>D O II</i>	<i>Die Urkunden Otto des II.</i> , ed. Th. SICKEL (Berlin, 1888: <i>Diplomata regum et imperatorum Germaniae</i> 2.1).
<i>Epp.</i>	<i>Epistolae</i> (in quarto) 8 vols. (Berlin, 1887-).
<i>LL</i>	<i>Leges</i> .
<i>Leg. nat. germ.</i>	<i>Leges nationum germanicarum</i> (Hannover, 1892-).
<i>Form.</i>	<i>Formulae Merovingici et Karolini aevi</i> , ed. K. ZEUMER (Hannover, 1886).
<i>SS</i>	<i>Scriptores</i> (in folio; then in quarto) 1- (Hannover, 1826-).
<i>MIÖG</i>	<i>Mitteilungen des Instituts für österreichische Geschichtsforschung</i> 1- (1880-).
<i>MMS</i>	<i>Münstersche Mittelalter-Schriften</i> 1- (Munich, 1970-).
<i>MPH</i> s.n.	<i>Monumenta Poloniae Historica</i> , series nova 1- (Cracow, 1951-).
<i>PRS</i>	<i>Pipe Roll Society Publications</i> 1- (London, 1884-).
<i>RRS</i>	<i>Regesta Regum Scottorum</i> , 1, <i>The Acts of Malcolm IV King of Scots 1153-1165</i> , ed. G.W.S. BARROW (Edinburgh, 1960); 2, <i>The Acts of William I King of Scots 1165-1214</i> , ed. G.W.S. BARROW with the collaboration of W.W. SCOTT (Edinburgh, 1971).
<i>SZC</i>	<i>Studia Źródłoznawcze: Commentationes</i> 1- (1957-).
<i>Tr Freising</i>	<i>Die Traditionen des Hochstifts Freising</i> , ed. Th. BITTER-AUF, 2 vols. (Munich, 1905-1909).
<i>UBLOE</i>	<i>Urkundenbuch des Landes ob der Enns</i> , 11 vols. (Vienna, then Linz, 1852-1983).
<i>UB St. Gallen</i>	<i>Urkundenbuch der Abtei Sanct Gallen</i> , ed. H. WARTMANN, 2 vols. (Zurich, 1863-1866).

Introduction

KARL HEIDECKER

Questions about written sources remain fundamental to an enquiring historian.¹ Why was a text written and how was it used? Studying these questions for one genre of texts as it evolved over a long period may provide us with insights into the functions and development of writing in society. Which developments can we observe in the roles writing played in medieval societies? In which domains was writing used, and by whom? Why did changes take place? We cannot answer these apparently simple questions without raising fundamental issues about the nature of our written sources. Why were texts written down at all? For which reasons were they preserved, and in which forms?

Students of the development of literate mentalities in the Middle Ages are increasingly realizing that a review of the questionnaire of historical criticism as it has developed in the “auxiliary sciences” of history is a precondition for acquiring a better understanding of the process by which medieval societies came to adapt forms of literate behaviour to their needs. In recent decades students of palaeography, codicology, the history of the book and diplomatics have made valuable contributions to the study of communication by writing. Their studies combine a new awareness of the importance of “literacy” with the detailed scrutiny of the sources they know best. However, the balance between general questions and the particulars of the analysis of individual texts, scripts, manuscripts or documents is often uneasy. Many scholars trained in the “auxiliary sciences” of historical research have difficulties in resisting the temptation

¹ See, e.g. P. CLASSEN, “Zur Einführung”, in: *Recht und Schrift im Mittelalter*, ed. P. CLASSEN (Sigmaringen, 1977: *Vorträge und Forschungen* 23), pp. 7-12.

to write more than they need about the raw materials of history when addressing the question of literate behaviour. This happens even when questions are posed by the “generalist” historians whose research the specialists in the “auxiliary” sciences are to serve. Consequently, too much of what has been written on literacy by diplomatists has failed to be considered seriously in general discussions of the topic. Under these circumstances, providing non-specialists with a readable sample of the results of research into literacy by diplomatists might serve to further the exchange of information between practitioners of one of the oldest “auxiliary” sciences and other scholars interested in medieval literacy and communication.

The present volume is concerned with charters. The term *charter* itself needs some explanation, if only because its use poses problems of translation. These problems inevitably arise when the contributions to a volume such as this have been written by scholars whose mother tongue is not—or not exclusively—English, and who come from different research traditions. Already some time ago, diplomatists realized the existence of different interpretations of what in English is called *charter*. It has resulted in the publication of a *Vocabulaire international de la diplomatie*,² which, although indispensable, does not solve all problems of translation. The classifications of terms in the different languages usually simply do not correspond. What, for instance, is the exact meaning of the English word *charter*? Does it have the same meaning as the Dutch *oorkonde*, which roughly corresponds with German *Urkunde*? By *Urkunden* are meant, in the classical definition of Harry Bresslau:

... written declarations meant to serve as evidence of actions of a legal kind, recorded in specific forms, which are, however, changing according to the various persons, times, places and topics concerned.³

Urkunde in this volume has been translated into English by *charter*. This means that *charter* is used in a very large sense. In French, this meaning of *charter* corresponds with that of the term *acte écrit*.⁴ There are similar problems with

² *Vocabulaire international de la diplomatie*, ed. M.M. Milagros CÁRCEL ORTÍ (Valencia, 1994: Commission Internationale de Diplomatie, Comité International des Sciences Historiques).

³ H. BRESSLAU, *Handbuch der Urkundenlehre für Deutschland und Italien*, 2 vol. (First edn. Leipzig, 1889; 2nd edn. Leipzig and Berlin, 1912-1931), 1, p. 1: “Urkunden nennen wir im Sinne der nachfolgenden Darlegungen schriftliche, unter Beobachtung bestimmter, wenn auch nach der Verschiedenheit von Person, Ort, Zeit und Sache wechselnder Formen aufgezeichnete Erklärungen, die bestimmt sind, als Zeugnisse über Vorgänge rechtlicher Natur zu dienen”.

⁴ O. GUYOTJEANNIN, J. PYCKE and B.-M. TOCK, *Diplomatique médiévale* (Turnhout, 1993: L'atelier du médiéviste 2), p. 16: “La diplomatie étudie donc les actes écrits: 1° consignant des

the translation of terms denoting related documents; the problems become almost insoluble when the technical vocabulary developed in the various traditions of research need translating. Often it has been necessary to preserve the original expression, in brackets, next to the translation.

These terminological problems reflect epistemological problems that can only be mentioned here. Because of the contemporary status of the physical sciences, in the nineteenth century diplomatics came to be counted among the auxiliary “sciences” of history. Just as the notion of a “science” of history has not been entertained by historians for some time now, just so the notion of the auxiliary sciences needs revision. The development of fine terminological distinctions in the different traditions of scholarship obfuscates the object of diplomatics. Through its attention to the completion of dossiers and to minutely detailed analysis of charters, research has tended to arrive at conclusions which, though indisputable, were of ever-decreasing generality. Their interest became less than apparent to benevolent outside observers. Increasing numbers of charters have been repertoried since the foundation of the *École des Chartes* in Paris (1821), the *Institut für Österreichische Geschichtsforschung* in Vienna (1854), and the spread of formal teaching in diplomatics almost everywhere north of the Alps. Until quite recently, these charters were submitted to the rigorous analysis developed from the days of Jean Mabillon onwards; not many scholars had either the time or the inclination to question the premises of their method. Hence the apparent disregard for copies, wherever originals had been preserved (which was left to archival studies⁵), and the absence of interest in the reasons for the making of copies or the way they look. The paradigm⁶ of diplomatics has been unchanged from the publication of Bresslau’s *Handbuch der Urkundenlehre* in 1889 onwards. It is only today that, due to some extent to the questions posed by students of medieval literate behaviour, the first tiny cracks

actions (ventes, donations, mises en gage, testaments...) ou des faits (naissances, décès...) juridiques, 2° et leur donnant une certaine validité juridique. (...) En outre, et du fait même de leur caractère juridique, ils doivent être établis conformément à certaines traditions, d'ailleurs variables selon les auteurs, les périodes et les endroits, de manière à ne pas paraître choquants au regard des juges”.

⁵ Cf. *infra*, note 22.

⁶ In the sense of T.S. KUHN, *The Structure of Scientific Revolutions*, 2nd edn. (Chicago and London, 1970), p. 43: “Close historical investigation of a given specialty at a given time discloses a set of recurrent and quasi-standard illustrations of various theories in their conceptual, observational, and instrumental applications. These are the community’s paradigms, revealed in its textbooks, lectures, and laboratory exercises. By studying them and by practicing with them, the members of the corresponding community learn their trade”. Discussing the process leading to revolutions in the physical sciences, his observations are *mutatis mutandis*, also applicable to historical disciplines such as diplomatics.

in the paradigm are becoming visible to an expert's eye.⁷ Hopefully, diplomatics and the other disciplines which together are called (for want of a better name) the "auxiliary sciences" of history will survive the onslaught on their practitioners wherever funds for university posts and research institutes are cut. But this will happen only when charters are no longer studied only for their own sake, but also for what they may tell us about, for instance, the development of medieval literate culture. The essays that follow will show something of the promises held by charter studies in this respect.

Charters, as defined by Bresslau, as a genre have the advantage that they have been written during the entire Middle Ages and have touched the lives of many social groups. Charters are not only written texts but also material things.⁸ Their texts are written down, preserved, copied (and often rewritten in the process), and used in many ways by many different people. The actions that may result in charters, the things done with charters as texts and objects, and the people who are responsible for these things, are the focus of this collection of essays.

Writing Charters: Commissioning the "Flat-Arsed Conveyancer"

Who is the person that sits down, drafts and writes the charter? Or, as David Postles puts it, quoting Paul Hyams, who is the "flat-arsed conveyancer"?⁹ And who is the person that commissions him to do so? These questions in themselves are not new to diplomatics, although they are seldom put that graphically; they have been carefully discussed in specialised studies on *Kanzleigemäßheit* and *Empfängeranfertigungen*, whose scrupulousness verged on pedantry. This is explained by the fact that studies on charters are often byproducts of editions. Editions of sources are among the most important products of the medievalist's trade, and studies of medieval society are inconceivable without them. Research based on a good edition can be a joyful experience, allowing one to go beyond the onerous though gratifying task of dating and localizing a text and its author. Even the student of unedited charters, however, ought

⁷ See, e.g. *Pratiques de l'écrit documentaire au XI^e siècle*, ed. O. GUYOTJEANNIN, L. MORELLE and M. PARISSE, special issue of *BEC* 155 No.1 (1997).

⁸ Cf. P. RÜCK, "Die Urkunde als Kunstwerk", in: *Kaiserin Theophanu*, ed. A. VON EUW and P. SCHREINER, 2 vols. (Cologne, 1991), 1, pp. 311-333.

⁹ D. POSTLES, "Country *clerici* and the composition of English twelfth- and thirteenth-century charters", *infra*, at p. 29.

to move on from the “*hantise des origines*”¹⁰ and try to put writer and commissioner of charters in their social context.

In his contribution, Mark Mersiowsky provides a short historiographical overview of diplomatics and suggests a change of perspective when considering Carolingian sovereign charters. From an approach that sees charters mainly as expressions of royal issuers—even although one has very often realised that some charters had been asked for—the perspective should change to that of the beneficiaries, who also wanted the charter to express something—hence a more consumer-oriented approach.

David Postles deals with the persons who sit down and write charters. More in particular, he deals with the writing of local charters for the lesser laity in twelfth- and thirteenth-century England. For this section of society, these documents were probably their most important experience of both writing and law. Hence the importance of the conveyancers of these charters.

The role of writing in Carolingian government has retained the attention for quite some time. The Carolingian administration could be seen as the first large-scale attempt in Europe north of the Alps to create an effective government since the fall of the Roman Empire. Writing was a principal means employed by the Carolingian administration to exert influence over the vast territory of the Empire it strove to control. The effectiveness of this attempt is hotly debated.¹¹ Against this background, Philippe Depreux describes one very particular type of document: charters confirming an exchange of property. A careful analysis of the use of these documents reveals that a distinct formulary was developed by the royal administration, which comes close to modern pre-printed forms. This suggests that the use of these written documents must have been relatively widespread.

On a quite different note, Herwig Weigl’s contribution stresses the stark contrast between the formal requirement, by central government in late medi-

¹⁰ Cf. M. BLOCH, *Apologie pour l’histoire ou Métier d’historien*, ed. E. BLOCH (Paris, 1993), pp. 53–57, with the conclusion (p. 57): “Jamais, en un mot, un phénomène historique ne s’explique pleinement en dehors de l’étude de son moment. Cela est vrai de toutes les étapes de l’évolution. De celle où nous vivons comme des autres. Le proverbe arabe l’a dit avant nous: ‘Les hommes ressemblent plus à leur temps qu’à leurs pères’. Faute d’avoir médité cette sagesse orientale, l’étude du passé s’est parfois discréditée”.

¹¹ On literacy in Carolingian society, see: R. MCKITTERICK, *The Carolingians and the Written Word* (Cambridge, 1989); *The Uses of Literacy in Early Mediaeval Europe*, ed. R. MCKITTERICK (Cambridge, 1990), and esp. the article of J. NELSON, “Literacy in Carolingian Government”, pp. 258–296; *Schriftkultur und Reichsverwaltung unter den Karolingern*, ed. R. SCHIEFFER (Opladen, 1996: *Abhandlungen der Nordrhein-Westfälischen Akademie der Wissenschaften* 97). Too critical of the importance of literacy in Carolingian society is M. RICHTER, *The Formation of the Medieval West: Studies in the Oral Culture of the Barbarians* (Dublin, 1994).

eval Austria, and the actual use of the written word. Despite the modest conclusions expressed by the author, about the importance of writing in court, we can see that much writing concerning litigation was in fact going on. Ducal and municipal administrators made records of those elements of the proceedings that were of interest to them, as for example the fines collected. Writing charters initially was mostly done either by the parties that had settled their conflict or by an arbitrator or judge who had settled the matter. Only elements used for the settlement were recorded. Later, the charters, then mostly issued by the court, became more elaborate, recording most of the proceedings. This development may have been influenced by proceedings in canon law.

*The Introduction and Increase in Charter Production, or:
"From Memory to Written Record" Revisited*

If the matter of commissioning and writing charters had been discussed by students of charters almost for as long as diplomatics has existed, the growth in charter production over a long period and its influence on the development of a literate mentality were issues that were first clearly stated in 1979. Any historian interested in the subject of literacy and charters knows Michael Clanchy's *From Memory to Written Record*.¹² The main contention of this book is, "that lay literacy grew out of bureaucracy, rather than from an abstract desire for education or literacy".¹³ To explain his contention, Clanchy went far beyond a mere description of the production and use of charters, placing it within the framework of all uses of writing known to the society he studied. *From Memory to Written Record*, written to account for the English experience of the introduction of writing, provided an approach and a thesis that were to attract specialists of other medieval regions and periods. The growth of literacy, or rather documentary literacy, is a central issue in several contributions. Was the existence of a state bureaucracy its main cause? As if by chance, here it is treated for four regions all located almost at the fringes of Carolingian and Anglo-Saxon Europe north of the Alps: Poland, Bohemia, Scotland and the counties of Holland and Zeeland.

Anna Adamska says that in Poland charter production was initially mainly an ecclesiastical affair or, to be even more specific, an affair of the new monastic orders such as the Cistercians. Later, kings and princes became involved.

¹² M.T. CLANCHY, *From Memory to Written Record. England 1066-1307* (1st edn. London and Cambridge, Mass., 1979; 2nd, considerably enlarged edn. Oxford and Cambridge, Mass., 1993).

¹³ *Ibid.*, p. 19.

This was followed by a boom in charter production in the thirteenth century, caused by changes in social organisation and economic growth. However, the ground for this growth had been prepared by large sections of society, not only clerics but also kings and noblemen, becoming accustomed to the use of writing. Before the thirteenth century, charters from abroad were known in Poland, and the writing of texts other than charters had already begun.

The situation in Bohemia as described by Ivan Hlaváček also shows the new monastic orders to have used writing initially. They were followed by other ecclesiastics, and these in turn by the ducal and royal administrations. An additional element in this process was that, in the thirteenth century, the Bohemian dukes acquired possessions in Austria, which already knew more elaborate forms of administration.

The introduction of charter writing in Scotland seems initially to have been an ecclesiastical as well as a royal matter. As royal authority expanded, so did acquiring royal charters become more interesting to lay aristocrats. In his contribution, Dauvit Broun dismisses the existence of so-called “Celtic charters” in Scotland and Ireland.

The situation in the counties of Holland and Zeeland, finally, seems to differ considerably from that in England, according to Eef Dijkhof. The growing use of charters was not caused by a state bureaucracy but by the growing economies of the towns. Their population used writing to achieve practical ends in a practical manner.

What do the results of these four case studies mean for our understanding of the process from memory to written record? It has to be remembered that Clanchy wrote only about post-Conquest England, and that he did not think his conclusions might be summarily generalized for Europe as a whole. If others (and notably some early medievalists) read an evolutionist hidden agenda into them, the author of *From Memory to Written Record* could hardly be blamed for that. Maybe—a hypothesis suggested by our four case studies—the Carolingian and Anglo-Saxon worlds were the exceptions, in that they seem to have known the development of forms of documentary literacy early on. If we sometimes generalize what we think to know about the Carolingian experiment and the English post-Conquest achievement, that may say more about early twenty-first-century perceptions than about medieval realities.

Preserving Charters: The Organization of Archival Memory

Asking about the use of charters leads logically to the different ways charters were treated once they had been written down. Were they preserved, and,

if so, how? Which texts were kept as originals? Which ones were copied—and altered in the process? In other words: how did people go about the business of preserving the archival memory of the institutions they belonged to? For it is almost exclusively the archival memories of ecclesiastical institutions which are dealt with here.

A pathfinding study on this topic was Peter Johaneke's article on the legal functions of different forms of charters and the ways they were recorded and copied.¹⁴ He could explain the absence of a whole group of charters in most of the Germanic-language parts of the former Carolingian empire before the twelfth century. Not that they had not been written. They had rather been considered of no use in their original format once a clearly distinct type of charter—the sealed charter—had become prevalent. Most of the older non-sealed charters were either neglected or rewritten and sealed, providing a new, adequate form for the legal function they were supposed to fulfil.

Copies made in manuscript books or on scrolls clearly had other meanings besides legal ones. Over the last decades, many German scholars have paid attention to *memoria*, the liturgical remembrance of the living and dead members of a community. Charters copied in books and on scrolls have also been studied from this angle.¹⁵

Recently, all these points have been taken up by Patrick Geary, who placed them in the wider historical context of changes in the tenth and eleventh centuries. Post-Carolingian society, Geary states, had to reorganise and rewrite its past to make it functional again in changed circumstances.¹⁶ Geary's book has provoked much of the thought that went into the contributions making up this section of our volume.

Georges Declercq describes the preservation of charters in different forms, as originals and in cartularies, in the Carolingian Empire and in its successor states. The charters' original format and their forms of preservation provide important indications as to their use and as to changing attitudes towards charter writing and preserving. The western and eastern areas of the Carolingian Empire prove to have witnessed different developments.

¹⁴ P. JOHANEK, "Zur rechtlichen Funktion von Traditionsnotiz, Traditionsbuch und früher Siegelurkunde", in: *Recht und Schrift im Mittelalter*, pp. 131-162.

¹⁵ To give but one example among many: P. JOHANEK, "Die Corveyer Traditionen als Gedenküberlieferung", in: *Der Liber Vitae der Abtei Corvey: Studien zur Corveyer Gedenk-Überlieferung und zur Erschliessung der Liber Vitae*, ed. K. SCHMID and J. WOLLASCH (Wiesbaden, 1989), pp. 124-134.

¹⁶ P.J. GEARY, *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millennium* (Princeton, 1994).

Laurent Morelle gives a detailed analysis of the way charters were preserved in three eleventh-century monasteries and why this was done in this way. He notes an increase in monastic charter production and an amelioration in the preservation of charters. Documentary writing was becoming more important in these monasteries, who defined their rights and their identity in a changing society by copying the charters they had received and also, increasingly, by writing their own.

Alexander Hecht reconstructs the composition of a thirteenth-century codex containing the charters of the Bavarian monastery of Reichersberg, explaining the different purposes such a book might serve. He shows the necessity of studying a codex as a whole. Previous editors had taken charters out of their codicological context or, worse, in their editions composed spurious historiographical volumes as they thought they should have existed in the Middle Ages.

Using Charters: Oral and Literate Modes of Social Behaviour

Summarizing the entire debate on the controversy surrounding “literacy” and “orality” in a few lines would be a reckless thing to do. The subject has conclusively proven its usefulness as witnessed by the numerous studies devoted to it.¹⁷ The last two contributions to this volume originate from two important projects (based at Münster and Zurich) dealing with “pragmatic literacy”.¹⁸ In this approach, literacy and orality are not seen as contrasting poles, but as two complementary modes of communication that may be chosen to deal with matters of a society’s concern. The ways in which the literate and oral modes are employed, are mainly decided by the objectives of the social actors. One mode is not necessarily superior to the other. In particular instances the

¹⁷ A concise treatment of the matter and an abundant bibliography can be found in: M. MOSTERT “New approaches to medieval communication?”, in: *New Approaches to Medieval Communication*, ed. M. MOSTERT (Turnhout, 1999: *Utrecht Studies in Medieval Literacy* 1), pp. 15-37, at pp. 22-35, and ID., “A bibliography of works on medieval communication”, *ibid.*, pp. 193-297.

¹⁸ On the ideas guiding the Münster project, see: H. KELLER, “Träger, Felder, Formen pragmatischer Schriftlichkeit im Mittelalter: Der neue Sonderforschungsbereich 231 an der Westfälischen Wilhelms-Universität Münster”, *FSt* 22 (1988), pp. 388-409, followed by almost yearly reports in: *FSt*; and ID., “Vom ‘heiligen Buch’ zur ‘Buchführung’: Lebensfunktionen der Schrift im Mittelalter”, *FSt* 26 (1992), pp. 1-31. “Pragmatic literacy” encompasses much more than “documentary literacy”. See: *Schriftlichkeit und Lebenspraxis im Mittelalter: Erfassen, Bewahren, Verändern (Akten des Internationalen Kolloquiums 8.-10. Juni 1995)*, ed. H. KELLER, C. MEIER and Th. SCHARFF (Munich, 1999: *MMS* 76). The concept of pragmatic literacy has been employed in English by: *Pragmatic Literacy, East and West, 1200-1330*, ed. R. BRITNELL (Woodbridge, 1997).

oral mode, all too often seen as the more primitive (or, if one prefers a less deprecatory term, "original") does not necessarily precede the literate mode.

Franz-Josef Arlinghaus describes the use of writing in North Italian law courts to create a distinctive sphere within society. Writing is not used to further communication by bridging distances, but, quite on the contrary, to create distance between people in conflict. An elaborate procedure was used, based on the recording of statements and their being read aloud in successive court sessions. In this way direct oral confrontation was avoided, and conflicts in the ever-busier Italian towns could be prevented. Litigation in its written form was virtually separated from everyday economic and social life.

The contribution by Simon Teuscher on the German recordings of oral law (*Weistümer*) proves that the general idea of societies evolving from a preponderance of oral modes of communication to literate ones can put us on a wrong track. What look to be records of oral statements, appear after scrutiny to be late medieval assemblages, based on written documents that were already available, such as statute books and charters. The oral mode is consciously used to give the appearance of venerable old age to the contents of older documents.

Where to Go from Here?

The contributions to this volume do not pretend to exhaust the possibilities of charters in the study of medieval literacy—far from it. The main purpose of this volume has been to show that new insights into medieval literacy may indeed be gained from the study of charters and related documents. Clearly, further forays into regions and periods not dealt with in this collection (most of Italy, the Iberian peninsula, Hungary and southeastern Europe...) would prove enlightening. Over the last decades, the importance of literacy as a theme in medieval studies has become so pronounced that it no longer needs explicit justification. Because of this, the study of documentary literacy may have become less fashionable with scientific policy makers than it once was. But it is far from exhausted.

As a corollary, the contributions to this volume may suggest ways in which diplomatics as a subject might renew itself. This historical discipline continues to have a role to play as an essential branch of historical studies, the results of which must be of interest to historians generally. Clearly scholars interested in medieval literacy and communication do benefit from charter studies, particularly when their results are accessible to non-specialists. It would be beneficial if diplomatics' practitioners were to realize anew the true, formative nature of

their discipline. If they agree that the time for a change of paradigm seems to have come, charter scholars could do worse than look beyond the generation of Bresslau to the discipline's founding fathers Daniel Papebroich, Jean Mabillon, Charles François Toustain and René Prosper Tassin.¹⁹ These founding fathers of historical criticism can offer a fresh look at charters, not hampered as they were by the systematization of charter studies' current paradigm. This is possible only, of course, when we are aware of the difficulty that these seventeenth- and eighteenth-century scholars had an anachronistic attitude to documents, because their principal aim was to distinguish "true" charters from "false" ones, so that they could "clean up" the title-deeds on which their religious houses and orders depended. Historians and students of charters today should be treating documents like other medieval artifacts. Every document is a cultural construct and, in a way therefore, it is a "forgery". The essential question today is not whether a charter is "true" or "false", but: what light does it throw on medieval culture and mentalities?

In this volume, charters have been considered both as texts and objects. Although there would have been no objection from the editor of the series, no contributor has submitted reproductions of charters or cartularies for inclusion in this volume. The absence of images is fortuitous rather than planned. Clearly any study of charters as material objects and as carriers of meaning will gain from the analysis of the important series of reproductions that are being published at present in book form,²⁰ on CD-rom,²¹ and no doubt in the future on the internet. The palaeography of charters will greatly benefit from these initiatives. The contributions to the section in this book on the preservation of charters

¹⁹ For the works of Papebroich and Mabillon, see M. MERSIOWSKY, "Towards a reappraisal of Carolingian sovereign charters", *infra*, pp. 16-17. The Maurist monks Toustain and Tassin devoted attention in their *Nouveau traité de diplomatique*, 6 vols. (Paris, 1750-1765), an expanded vernacular version of Mabillon's *De re diplomatica libri sex*, to matters which could only be dealt with by Bresslau in stepmotherly fashion. Thus, they realized the importance of word separation for reading the texts of charters aloud (vol. 3, pp. 466, 489); their treatment, according to P. SAENGER, *Space between Words: The Origins of Silent Reading* (Stanford, Ca., 1997), p. 22, "remains among the most useful general enquiries into the matter".

²⁰ Cf., e.g. the extraordinarily useful volumes in the series *Chartae Latinae Antiquiores*, ed. A. BRUCKNER and R. MARICHAL (Olten and Lausanne, 1954-1967, Zurich, 1975-), which aimed to publish in facsimile, transcribe diplomatically, and annotate every surviving non-literary Latin text on papyrus or parchment up to AD 800; the series is being continued, a.o. by the *Monumenta Palaeographica Medii Aevi: Series Gallica*, ed. H. ATSMAN and J. VEZIN (Turnhout, 1997-).

²¹ E.g. the *Thesaurus Diplomaticus* (Turnhout, 1998-), which, when completed, will provide a.o. iconographical presentations of the 2400 original charters from the seventh to the twelfth century dealing with the history of present-day Belgium. At Nancy, the ARTEM (Atelier de Recherche sur les Textes Médiévaux et leur traitement assisté) prepares an edition on CD-rom which will include facsimiles of all original charters up to the year 1120 preserved in France.

show that the study of cartularies is advanced by attention to codicological considerations.²²

In 1996, a hefty tome was published on the graphical symbols in medieval charters. It contained “contributions to the semiotics of charters”.²³ Peter Rück, its editor, defined the objective of this new approach to charter studies as

understanding the charter as a system of—linguistic, graphical and material—signs (codes) in a process of communication; elaborating the morphology, semantics, syntax, function (pragmatics) and development of this system and its elements; and distinguishing it from other textual systems.²⁴

Many authors limited themselves to an inventory of the graphical symbols occurring in the charters they happened to be familiar with. Useful though these contributions were, the promises of the “semiotic approach” were clearest in the section on the function of graphical symbols which sought—for the first time ever—to study crosses, seals, chrismons, monograms and other symbols diachronically. If ever the editor of the present book were to envisage a successor volume, it would probably be in the format of a collection of essays about the changing functions of charters-as-objects and of the verbal and non-verbal signs they contain.

²² Cf. also O. GUYOTJEANNIN, “*Super omnes thesauros rerum temporalium: Les fonctions du trésor des chartes du roi de France (XIV^e-XV^e siècles)*”, in: *Écrit et pouvoir dans les chancelleries médiévales: Espace français, espace anglais: Actes du colloque international de Montréal, 7-9 septembre 1995*, ed. K. FIANU and D.J. GUTH (Louvain-la-Neuve, 1997: *Fédération Internationale des Instituts d'Études Médiévales: Textes et Études sur le Moyen Âge* 6), p. 111: “*Rares, en bref, les histoires des archives qui ne soient pas seulement des hors-d'oeuvre à la reconstitution et à la description des fonds anciens, mais encore des histoires du pouvoir et des systèmes de maîtrise de l'écrit—la voie a été ici tracée par nos collègues codicologues, qui ont mieux et plus tôt vu tout l'intérêt d'une histoire des catalogues de bibliothèques*”.

²³ *Graphische Symbole in mittelalterlichen Urkunden: Beiträge zur diplomatischen Semiotik*, ed. P. RÜCK (Sigmaringen, 1996: *Historische Hilfswissenschaften* 3).

²⁴ P. RÜCK, “Beiträge zur diplomatischen Semiotik”, in: *Graphische Symbole in mittelalterlichen Urkunden*, p. 13: “*Aufgabe einer diplomatischen Semiotik ist es, die Urkunde als System von—sprachlichen, graphischen und stofflichen—Zeichen (Codes) in einem Kommunikationsprozeß zu begreifen: Morphologie, Semantik, Syntax, Funktion (Pragmatik) und Wandel des Systems und seiner Elemente herauszuarbeiten und von anderen textlichen Systemen abzugrenzen*”.

Part I: Writing Charters

Towards a Reappraisal of Carolingian Sovereign Charters

MARK MERSIOWSKY

The sovereign charters of the Carolingian period have been subject to intensive study in the various fields of diplomatics. They are all available in modern editions, with one important exception, the diplomas of Emperor Louis the Pious (814-840).¹ Nevertheless, the very fact of their availability in the volumes of the *Monumenta Germaniae Historica*, the *Chartes et Diplômes relatifs à l'histoire de France* and the *Fonti per la storia d'Italia* might suggest to historians that all of the basic problems have been solved and that there is not much new to be found in these revered monuments.² Thus, it might seem unnecessary to address the topic at all. However, since I decided to concentrate on precisely this topic in my *Habilitation* thesis which I am currently working on, I would like to present here some observations underlying

¹ A list of editions of Carolingian sovereign charters can be found in R.-H. BAUTIER, "La chancellerie et les actes royaux dans les royaumes carolingiens", *BEC* 142 (1984), pp. 5-80, esp. pp. 76-80; cf. C. BRÜHL, "Gli atti sovrani", in: *Fonti medioevali e problematica storiografica: Atti del congresso internazionale tenuto in occasione del 90° anniversario della fondazione dell'Istituto storico Italiano (1883-1973)*, Roma 22-27 ottobre 1973, 1, Relazioni (Rome, 1976), pp. 19-40, reprinted under the title: "Die Herrscherurkunden", in: C. BRÜHL, *Aus Mittelalter und Diplomatie: Gesammelte Aufsätze*, 2, *Studien zur Diplomatie* (Hildesheim, Munich and Zurich, 1989), pp. 526-549. To complete the list of editions, add *Die Urkunden der Karolinger*, 4, *Die Urkunden Ludwigs II.*, ed. K. WANNER, (Munich, 1994: *MGH DD Karolinerum* 4). For the charters of Louis the Pious, see M. MERSIOWSKY, "Zur Edition der Diplome Ludwigs des Frommen", in: *Manipulus florum: Festschrift für Peter Johanek zum 60. Geburtstag*, ed. E. WIDDER, M.-Th. LEUKER and M. MERSIOWSKY (Münster, 2000), pp. 307-340 (in the press).

² E.g., R. MCKITTERICK, *The Carolingians and the Written Word* (Cambridge, 1989), who does not deal with sovereign diplomas; the "Abbreviations", pp. XIV-XVI, do not even list the editions.

my decision to take on this project. The title *Towards a reappraisal of Carolingian sovereign charters* is in no way intended to be a *captatio benevolentiae*, rather it should be taken literally. In the framework of this volume, I wish to present some fundamental ideas underlying my present work, although I am not yet able to present the complete results.

In 1633, an anonymous treatise appeared in Trier under the title *Archiepiscopatus et Electoratus Trevirensis, Per refractarios Monachos Maximinianos, Aliosque, turbati*.³ It opened a protracted *bellum diplomaticum* between the abbey of Saint Maximin and the archbishopric of Trier, and at the same time an epoch in diplomatics, the period of the *bella diplomatica*. In these *bella diplomatica*, interested parties battled over the authenticity of the charters concerning privileges they disputed. During the course of these battles, which were fought not only in the courts put also in public memoranda, an extensive body of writing came into being.⁴ Of great importance in the history of diplomatics was an authentication that was part of just such a dispute; in 1672 a charter of Emperor Louis I, Louis II or King Louis for the abbey of Lindau in 866 was discussed by Hermann Conring, professor at Helmstedt and *polyhistor*. Conring had already provided several authentications on essential charters. In his endorsement, which was commissioned by the Lindau side, he systematically developed essential methodical principles to determine the authenticity of a charter by comparing it with other, incontestably genuine documents from the same issuer.⁵

Diplomatics became a scholarly discipline in the dispute between, on the one side, Jean Bolland and the Jesuit Bollandists, whose ideas were expressed in the *Acta Sanctorum*, and on the other side, the congregation of French Benedictines, the Maurists, in their *Acta Sanctorum ordinis sancti Benedicti*. In opposition to the positions formulated by the Jesuit Daniel Papebroich, who maintained that the oldest charters of the abbey of St. Denis in particular were

³ *Archiepiscopatus et electoratus trevirensis, Per refractarios Monachos Maximinianos, Aliosque, turbati* (Trier, 1633).

⁴ Th. SICKEL, *Lehre von den Urkunden der ersten Karolinger (751-840)* (Vienna, 1867: *Acta regum et imperatorum Karolinorum digesta et enarrata: Die Urkunden der Karolinger, Erster Theil: Urkundenlehre*), pp. 30-33; C. BRÜHL, "Die Entwicklung der diplomatischen Methode im Zusammenhang mit dem Erkennen von Fälschungen", in: *Fälschungen im Mittelalter: Internationaler Kongress der MGH, München, 16.-19. September 1986*, 3, *Diplomatische Fälschungen I* (Hannover, 1988: *MGH Schriften* 33.3), pp. 11-27, esp. pp. 20 ff.; J. BURKARDT, *Die Historischen Hilfswissenschaften in Marburg (17.-19. Jahrhundert)* (Marburg, 1997: *Elementa diplomatica* 7), p. 21 (with bibliographical data).

⁵ H. CONRING, *Censura diplomatice quod Ludovico imperatori fert acceptum coenobium Lindaviense. Qua simul res imperii & regni Francorum ecclesiasticae ac civiles, seculi cumprimis Carolingici, illustrantur* (Helmstedt, 1672).

false,⁶ the Benedictine Jean Mabillon developed in his book *De re diplomatica libri sex* a general, a comprehensive system of diplomatics, which was based on an enormous amount of material. Mabillon created the methodical framework for the Papebroich-Mabillon *discrimen veri ac falsi in vetustis membranis*.⁷ The eighteenth and early nineteenth centuries concentrated on fine-tuning the methods, examining new fields and applying a systematic approach to them, as we see in the work of such diplomatics experts as Maffei, Bessel, Heumann, Tassin, Toustain, Gatterer and Schönmann.⁸

If I have begun with an excursion into the history of our field, which seems shamefully neglected to me, especially for the eighteenth century, it is because this development of the discipline has shaped research interests and research areas, and influences them even today. The core of diplomatics was and is the *discrimen veri ac falsi in vetustis membranis*. It was precisely the Carolingian sovereign charters which we are concerned with here that Theodor Sickel used in 1867 to develop the diplomatic method to its highest form. Comparison of scribes and *dictamen* was the main methodical instrument. The central problem for Sickel was always whether or not the charter was in keeping with the chancery in question; German diplomatic uses the expression “*kanzleigemäß*”.⁹ It would seem that Sickel in his edition of Ottonian charters in particular often

⁶ D. PAPEBROICH, “Ad tomum II Aprilis propylaeum antiquarium circa veri ac falsi discrimen in vetustis membranis”, in: *Acta Sanctorum aprilis collecta, digesta, illustrata*, a Godefrido HENSCHENIO et Daniele PAPEBROCHIO e Societate Iesu, tomus II (Antwerp, 1675), pp. I-XXXI. Cf. BRÜHL, “Die Entwicklung”, pp. 18-20.

⁷ J. MABILLON, *De re diplomatica libri VI. In quibus quidquid ad veterum instrumentorum antiquitatem, materiam, scripturam et stilum; quidquid ad sigilla, monogrammata, subscriptiones ac notas chronologicas; quidquid inde ad antiquariam, historicam, forensemque disciplinam pertinet, explicatur et illustratur. Accedunt Commentarius de antiquis Regum Francorum Palatiis. Veterum scripturarum varia specimina, tabulis LX comprehensa. Nova ducentorum, et amplius monumentorum collectio. Editio Secunda ab ipso Auctore recognita, emendata et aucta* (Paris, 1709), chap. 1 pp. 1-3; ID., *Librorum de re diplomatica supplementum. In quo archetypa in his libris pro regulis proposita, ipsaeque regulae denuo confirmantur, novisque speciminibus et argumentis asseruntur et illustrantur* (Paris, 1704), cap. 1, pp. 1-5; PAPEBROICH, *Propylaeum*. Cf. BRÜHL, “Die Entwicklung”, pp. 18-20.

⁸ A concise survey of diplomatics for the seventeenth through the nineteenth centuries is offered by: H. BRESSLAU, *Handbuch der Urkundenlehre für Deutschland und Italien*, fifth edn., 2 vols. (Berlin, 1912; repr. Berlin, 1969), 1, pp. 33 ff. I am planning very shortly to present a study of diplomatics in the eighteenth century (“Abwege der Diplomatie? Die Urkundenlehre im deutschen Sprachraum vor J.F. Böhmer”).

⁹ SICKEL, *Urkundenlehre*, pp. 55-63, 366-393; BRÜHL, “Die Herrscherurkunden”, pp. 536 ff.; ID., “Die Entwicklung”, pp. 22-24; ID., “Die diplomatischen Editionsmethoden und die Regestenarbeit in Deutschland, vorwiegend im Zeitalter der Romantik”, in: ID., *Aus Mittelalter und Diplomatie*, 3, *Studien zur Verfassungsgeschichte und Diplomatie* (Hildesheim, Munich and Zurich, 1997), pp. 241-252, esp. pp. 251 f.

overshot his target. He set such strict criteria that truly authentic charters, especially those produced by recipients, appeared to him unauthentic or forged. Although of prime importance, this edition today is the weakest part of the series of diplomatic volumes of the *Monumenta Germaniae Historica*, and urgently needs to be re-done.¹⁰ The research of Paul Fridolin Kehr, and also that of Hans-Walter Klewitz and Josef Fleckenstein has shown that Sickel unquestioningly projected nineteenth century ways of thinking back on to the Middle Ages. Sickel's ideas about the Carolingian chancery reflected his own experience with the developed ministerial bureaucracy of the *Donaumonarchie*.¹¹ In modern diplomatics we are more aware of the problems of the concept of the chancery.¹²

However, since Theodor Sickel, dealing with the chancery is the central issue of any evaluation of sovereign charters. Thus, it is no surprise that the reconstruction of the chancery, its organisation and its *modus operandi* were the centre of editors' interest.¹³ Methodically well-founded, but more or less unconsciously, or without proper reflection, diplomatics concentrated in this way on the level of the monarch; attention was focused on the monarch's "headquarters". The masterful survey of Robert-Henri Bautier in 1984 presented the development of the chanceries and the various formal categories in a comparative manner. These he presented recently again in the proceedings of the meeting of Olomouc on the typology of royal charters.¹⁴ In so doing, Bautier also followed research tradition. Therefore, it did not come as a surprise when Hagen Keller

¹⁰ C. BRÜHL, "Derzeitige Lage und künftige Aufgaben der Diplomatie", in: ID., *Aus Mittelalter und Diplomatie*, 2, pp. 463-473, esp. p. 466; ID., "Die Herrscherurkunden", pp. 536-538; Th. KÖLZER, "Die ottonisch-salische Herrscherurkunde", in: *Typologie der Königsurkunden: Kolloquium de la Commission Internationale de Diplomatie in Olmütz 30.8.-3.9.1992*, ed. J. BISTRICKÝ (Olomouc, 1998), pp. 127-142, esp. pp. 127 ff.

¹¹ H.-W. KLEWITZ, "Cancellaria: Ein Beitrag zur Geschichte des geistlichen Hofdienstes", *DA* 1 (1937), pp. 44-79. On the state of research, with appropriate references, cf. J. FLECKENSTEIN, *Die Hofkapelle der deutschen Könige*, 1, *Grundlegung: Die karolingische Hofkapelle* (Stuttgart, 1959; *MGH Schriften* 16.1), pp. 74-79; M. MERSIOWSKY, "Regierungspraxis und Schriftlichkeit im Karolingerreich: Das Fallbeispiel der Mandate und Briefe", in: *Schriftkultur und Reichsverwaltung unter den Karolingern: Referate des Kolloquiums der Nordrhein-Westfälischen Akademie der Wissenschaften, 17-18 Februar 1994 in Bonn*, ed. R. SCHIEFFER (Opladen, 1996; *Abhandlungen der Nordrhein-Westfälischen Akademie der Wissenschaften* 97), pp. 109-166, esp. pp. 109 ff.

¹² O. GUYOTJEANNIN, J. PYCKE and B.-M. TOCK, *Diplomatie médiévale* (Turnhout, 1993: *L'atelier du médiéviste* 2), pp. 223-227.

¹³ This is apparent in the titles of the most important secondary literature; cf. BAUTIER, "La chancellerie", pp. 76-80.

¹⁴ BAUTIER, "La chancellerie"; ID., "Les actes royaux de l'époque carolingienne", in: *Typologie der Königsurkunden*, pp. 23-41.

concluded in 1998 that “the charter activity of the king and his chancery was normally portrayed as a business, in which the recording room, the ‘chancery’ played the main part”.¹⁵ The perspective of classical diplomatics in dealing with early medieval royal charters was and still is that of the monarch.

Another factor defines the present state of research in Carolingian diplomatics and other periods as well. For diplomatic experts from Harry Bresslau to Carlrichard Brühl, from Georges Tessier to Robert-Henri Bautier, editorial practice was the epitome and also the essence of diplomatics.¹⁶ This well-founded and certainly justified position has had a small, but not insignificant side-effect, however. As soon as the texts were established, the question of authenticity solved and the edition published, diplomatics seemed to stop: *charta edita, causa finita*. Other articles on Carolingian diplomatics appeared, of course, but they always treated the same topics: they presented the rare, newly uncovered charters, or they carefully reconsidered charters of doubtful authenticity, often initiated by research on *regesta* and regional or institutional charter books. Another way in which many documents were examined anew was through research on forgery centres. My own interest in Carolingian diplomatics stems from an edition of the diplomas of Louis the Pious which I have been working on for 12 years under the direction of Peter Johanek in Münster.

Another characteristic of much research, both old and recent, is that the interest of diplomatics specialists is not in authentic charters but in forgeries. The originals are dealt with, of course; that is necessary to ascertain criteria for authenticity. But the true glory of the researcher is in discovering falsifications and their backgrounds. Here he can use historical, legal-historical, palaeographical and philological arguments, and in so doing prove his diplomatic acumen. Once more, the emphasis is on the *discrimen veri ac falsi*.

Heinrich von Fichtenau, Herwig Wolfram and his students wanted to blaze new paths. Their research on *arengae*, *intitulationes*, *narrationes* and dating revealed important insights, both diplomatic as well as general historical. In the field of Carolingian diplomatic it was recently most of all Wolfram’s student, Brigitte Merta, who carried out significant work. These Viennese scholars saw themselves as different from traditional diplomatics researchers.¹⁷ Fichtenau

¹⁵ H. KELLER, “Zu den Siegeln der Karolinger und der Ottonen: Urkunden als ‘Hoheitszeichen’ in der Kommunikation des Königs mit seinen Getreuen”, *FS* 32 (1998), pp. 400-441, at p. 425: “Die Beurkundungstätigkeit des Königs und seiner Kanzlei wird gewöhnlich wie ein Geschäft dargestellt, bei dem die Schreibstube, die ‘Kanzlei’, die wichtigste Rolle spielt”.

¹⁶ BRÜHL, “Die Herrscherurkunden”, pp. 531 ff.

¹⁷ For a survey of this research, cf. H. FICHTENAU, “Forschungen über Urkundenformeln: Ein Bericht”, *MIÖG* 94 (1986), pp. 285-339. To complete this survey, see H. FICHTENAU, “‘Dei gratia’ und Königssalbung”, in: *Geschichte und ihre Quellen: Festschrift für Friedrich Hausmann*

called the traditional points of departure of diplomatics “strict observance”.¹⁸ What they did was found something like a new Viennese school. Since they were interested in knowledge that went far beyond classical diplomatics, we are tempted to speak of *metadiplomatics* which is interested in the history of ideas, in politics, in constitutional history and concepts of sovereignty found in various charter formulae. The main thrust is to grasp the concepts and self-image of the early medieval monarch. Although this *metadiplomatics* has provided important results for classical diplomatics as well as general history, it remains on traditional grounds in its orientation towards the monarchical top, in spite of innovative ideas about the royal charters.

Diplomatics specialists are not alone in this approach. One example should suffice to prove my point. As a correction to older research, which had evaluated Charlemagne mostly on the basis of normative sources, Franz J. Felten went back to the charters and wrote chapters entitled *The monastic politics of Charlemagne as illustrated by his privileges* and *The monastic politics of Louis the Pious as illustrated by his privileges*. After presenting the two fundamental complexes of problems which he wanted to bring to our attention, he wrote, partially quoting Friedrich Prinz, as follows: “Both approaches assume that the will of the emperor played a decisive role in these questions and ‘that the donations and privileges of Charlemagne for churches and monasteries were not granted according to accident or humour, but originated in certain political plans of the sovereign’.”¹⁹ Charters, their distribution in time and space as sources and metasources, served general historical research to elucidate mo-

zum 70. Geburtstag, ed. R. HÄRTEL (Graz, 1987), pp. 25-35; *Intitulatio III.: Lateinische Herrschertitel und Herrschertitulationen vom 7. bis zum 13. Jahrhundert*, ed. H. WOLFRAM and A. SCHARER (Vienna, Cologne and Graz, 1988: *MIÖG* Ergänzungsband 29); B. MERTA, “Politische Theorie in den Königsurkunden Pippins I.”, *MIÖG* 100 (1992), pp. 117-131; B. MERTA, “Recht und Propaganda in Narrationen karolingischer Herrscherdiplome”, in: *Historiographie im frühen Mittelalter*, ed. A. SCHARER and G. SCHEIBELREITER, (Vienna and Munich, 1994: *Veröffentlichungen des Instituts für Österreichische Geschichtsforschung* 32), pp. 141-157; H. WOLFRAM, “Politische Theorie und narrative Elemente in Urkunden”, in: *Kanzleiwesen und Kanzleisprachen im östlichen Europa*, ed. C. HANNICK (Cologne, Weimar and Vienna, 1999: *AfD*, Beiheft 6), pp. 1-23.

¹⁸ On the “strict observation”, see H. FICHTEAU, “Zur Lage der Diplomatik in Österreich”, in: ID., *Beiträge zur Mediävistik: Ausgewählte Aufsätze*, 2, *Urkundenforschung* (Stuttgart, 1977), pp. 1-17, at p. 5.

¹⁹ F.J. FELTEN, *Äbte und Laienäbte im Frankenreich: Studie zum Verhältnis von Staat und Kirche im früheren Mittelalter* (Stuttgart, 1980: *Monographien zur Geschichte des Mittelalters* 20), pp. 174-279, at p. 176: “Beide Ansätze gehen davon aus, daß der Wille des Herrschers eine entscheidende Rolle in diesen Fragen stellte und ‘daß die Schenkungen und Privilegien Karls [des Großen] für Kirchen und Klöster nicht nach Zufall oder Laune erfolgten, sondern bestimmten politischen Absichten des Herrschers entsprangen’”.

narchal policy, monarchical ambitions, monarchical ideas and monarchical practices.²⁰ Hagen Keller's criticism of the concentration of diplomatics on the chancery did not signify a fundamental change of perspective. Even though he changed the main issue away from the chancery to the sovereign, his court, his representation of sovereignty, symbolic communication and the ceremonial framework of granting privileges, he did not solve the problem of an exclusively centralized view of the situation.

Several factors have contributed to the fact that modern diplomatics (just as general historical research) has not extensively and fundamentally occupied itself with Carolingian sovereign charters. A number of recent research areas have proved stimulating though, and new problems have been formulated. I mention here only the interdisciplinary research into the role of literacy in medieval societies²¹ and into conflict regulation.²² If you wish to inquire into the function of legal, written assurance and communication in the early Middle Ages, then an approach which is limited to the sovereign level is insufficient. Heinrich von Fichtenau undertook a regional study for Austria, albeit for a region with relatively few sovereign diplomas.²³

²⁰ For a typical example, see H.-W. GOETZ, "Der letzte 'Karolinger'? Die Regierung Konrads I. im Spiegel seiner Urkunden", *AfD* 26 (1980), pp. 56-125. We also think of the various studies from the circle of Eckhard Müller-Mertens. A brief survey of his approach can be found in E. MÜLLER-MERTENS, "Einleitung", in: MÜLLER-MERTENS and W. HUSCHNER, *Reichsintegration im Spiegel der Herrschaftspraxis Kaiser Konrads II.* (Weimar, 1992: *Forschungen zur mittelalterlichen Geschichte* 35), pp. 9-17; to complete the picture, see E. MÜLLER-MERTENS, "Politische Vororte des frühmittelalterlichen Reiches als Problem der Stadtgeschichtsforschung", in: *Die Frühgeschichte der europäischen Stadt im 11. Jahrhundert*, ed. J. JARNUT and P. JOHANEK (Cologne, Weimar and Vienna, 1998: *Städteforschung*, Reihe A, Darstellungen 43), pp. 21-30. On imperial conceptions and royal ideals, see the recent discussion by F.-R. ERKENS, "Der Herrscher als Gotes Drüt: Zur Sakralität des ungesalbten ostfränkischen Königs", *Historisches Jahrbuch* 118 (1998), pp. 1-39, esp. pp. 24-30, "die Karolingerurkunden". Cf. B.H. ROSENWEIN, *Negotiating Space: Power, Restraint and Privileges of Immunity in Early Medieval Europe* (Manchester, 1999).

²¹ We refer the reader to the comprehensive bibliography in M. MOSTERT, "A bibliography of works on medieval communication", in: *New Approaches to Medieval Communication*, ed. M. MOSTERT (Turnhout, 1999: *Utrecht Studies in Medieval Literacy* 1), pp. 194-318.

²² Cf. *The Settlement of Disputes in Medieval Europe*, ed. W. DAVIES and P. FOURACRE (Cambridge, New York and Oakleigh, 1986); K. HEIDECKER, "Communication by written texts in court cases: Some charter evidence (ca. 800-ca. 1100)", in: *New Approaches to Medieval Communication*, pp. 101-126.

²³ H. FICHTEAU, *Das Urkundenwesen in Österreich vom 8. bis zum frühen 13. Jahrhundert* (Vienna, Cologne and Graz, 1971: *MIÖG* Ergänzungsband 23). For a list of the diplomas, see B. MERTA, "Diplome und Briefe der Karolinger für den österreichischen Raum", in: *Die Geburt Mitteleuropas: Geschichte Österreichs vor seiner Entstehung 378-907*, ed. H. WOLFRAM (Vienna and Berlin, 1987), pp. 449-452. This list has been omitted from the revised version, H. WOLFRAM, *Grenzen und Räume: Geschichte Österreichs vor seiner Entstehung* (Vienna, 1995:

There is more. If you assume that granting privileges is a powerful expression of sovereign will or an essential act of symbolic communication, it comes as a surprise to find how little Carolingian historians took it into account, with the exception of an archivist-historian like Flodoard.²⁴ Instead, you come upon totally different things. I refer only to the collection of correspondence of Frothar, who, as Philippe Depreux recently demonstrated, was bishop of Toul from 814 on, and died in 849-850.²⁵ In a letter he requested Abbot Hilduin of Saint Denis to help him obtain the return of dispossessed property for the church of Toul. Frothar told his potential intercessor that he would send him copies of testaments relative to the affair. Around 828, Abbot Wichard of Inden (Kornelimünster) sent Frothar copies of three imperial charters: a gift of property, a dispensation of tolls and a charter of immunity. I tend to see the sending of these copies in the framework of the attempts of Frothar to regain possession of the charters of the church of Toul, which were burnt in 828; this action, according to a testimony of the twelfth century still, represented a great service.²⁶

Beneficiaries are visible in charter production, namely through beneficiary copies ("*Empfängerausfertigungen*"). During the heyday of Carolingian charter production under Louis the Pious and Charles the Bald, we find beneficiary copies produced primarily by Saint Denis—they are easily recognizable from their different line-usages;²⁷ in later days the use of beneficiary copies gained more and more ground.²⁸ Lotharingian beneficiaries went so far as not to produce charters of the East Frankish type, rather leaning towards West Frankish models to produce documents whose layout reflected their regional traditions, not that of the chancery.²⁹

Österreichische Geschichte).

²⁴ M. STRATMANN, "Die Königs- und Privaturkunden für die Reimser Kirche bis gegen 900", *DA* 52 (1996), pp. 1-55.

²⁵ Ph. DEPREUX, *Prosopographie de l'entourage de Louis le Pieux (781-840)*, with a preface by P. JOHANEK, (Sigmaringen, 1997: *Instrumenta* 1), pp. 204 ff.

²⁶ Frotharius, Letter No. 17, ed. in: *Epistolae Karolini Aevi* 3, ed. E. DÜMMLER (Berlin, 1899: *MGH Epp* 5) p. 287 ff.; Letter No. 30, ed. *ibid.*, p. 296 ff. On the letters of Frothar, see M. STRATMANN, "Schriftlichkeit in der Verwaltung von Bistümern und Klöstern", in: *Schriftkultur und Reichsverwaltung unter den Karolingern*, pp. 85-108, esp. pp. 85-89; M. PARISSE, *La correspondance d'un évêque carolingien: Frothaire de Toul (ca. 813-847)* (Paris, 1998: *Textes et documents d'histoire médiévale* 2).

²⁷ M. MERSIOWSKY, "Graphische Symbole in den Urkunden Ludwigs des Frommen", in: *Graphische Symbole in mittelalterlichen Urkunden: Beiträge zur diplomatischen Semiotik*, ed. P. RÜCK (Sigmaringen, 1996: *Historische Hilfswissenschaften* 3), pp. 335-383, at p. 340.

²⁸ P. JOHANEK, "Die karolingischen Diplome der *Francia orientalis*", in: *Typologie der Königsurkunden*, pp. 115-125, esp. pp. 123-125.

²⁹ Th. SCHIEFFER, *Die lothringische Kanzlei um 900* (Cologne and Graz, 1958), pp. 21-23 (also in: *DA* 14 (1958), pp. 17-148, at pp. 37-39). On the concept of layout in diplomatics, see P. RÜCK,

These briefly sketched examples show that beneficiaries were intensely involved with the production of charters, and that their ideas even extended to the layout of the charter. If the charter is really—as Hagen Keller proposes—a central monument of sovereign representation, it amazes us at least to see the extent of influence of the beneficiaries. I mention only in passing the research of Hans-Henning Kortüm, who attested massive influence of beneficiaries on papal products. Certainly the self-preservation force of the Frankish sovereign charter was stronger in the early Middle Ages than that of the papal charter; still, the sovereign charter needs to be reevaluated making use of methods similar to those of Kortüm.³⁰ It was not just the will of the sovereign that was behind a diploma; an agile beneficiary with good contacts at court could be behind the production of a diploma. At least towards the end of the ninth century, it was even possible for him to bring his own ideas about layout and language into the sovereign charter. Not so much bureaucratic action as personal connections allowed access to the sovereign and to the productions of charters, as research by Philippe Depreux and myself have demonstrated. Interventions and intercessors must be taken much more seriously than they have been.³¹

Thus, we find ourselves confronted with fundamental questions, for example, should we really speak of beneficiaries. The notion implies, after all, a very precise level of representation. In addition to the sovereign act of a monarch who produces a charter, the interested beneficiary appears, who, for motives that we need to question, desires a charter and in so doing, accepts the sovereignty. Charter reception as acceptance: more research from this perspective might be of importance.

It would be exaggerated to posit the thesis, in opposition to the traditional point of view, that there were no sovereign intentions underlying the granting of privileges. Even if research always feels the pressure to be original, we should not throw out the baby with the bathwater. However, consistent research which does not axiomatically assume a conscious policy to granting privilege is legitimate and necessary. Generally speaking, what is required is a change of

“Die Urkunde als Kunstwerk”, in: *Kaiserin Theophanu: Begegnung des Ostens und Westens um die Wende des ersten Jahrtausends: Gedenkschrift des Kölner Schnütgen-Museums zum 1000. Todesjahr der Kaiserin*, ed. A. VON EUW and P. SCHREINER, 2 vols. (Cologne, 1991), 2, pp. 311–333.

³⁰ H.-H. KORTÜM, *Zur päpstlichen Urkundensprache im frühen Mittelalter: Die päpstlichen Privilegien 896–1046* (Sigmaringen, 1995; *Beiträge zur Geschichte und Quellenkunde des Mittelalters* 17); cf. the review by H. JAKOBS, *DA* 52 (1996), pp. 224–225, esp. p. 225. See also, for methodological perspectives from the later Middle Ages: J. KRUISHEER, “Kanzleianfertigung, Empfängeranfertigung und Anfertigung durch Dritte: Methodologische Anmerkungen anlässlich einiger neuerer Untersuchungen”, *AfD* 25 (1979) pp. 256–300.

³¹ DEPREUX, *Prosopographie*, pp. 41–64; MERSIOWSKY, “Regierungspraxis”, pp. 127–135.

perspective: Carolingian grants of privilege should consistently be seen from the viewpoint of the beneficiary. This change of perspective does not mean we should not take into account the political intentions that have been established by scholarship. To the contrary, against such a backdrop the acts of the emperor appear perhaps even more meaningful.

I have been working on this type of research for two years in the framework of my *Habilitation* thesis. Central in my research are the following:

1. The question of the role of the sovereign's entourage for charter production.

2. The question of the interest of beneficiaries in diplomas. For that, we need a more far-reaching content typology of sovereign charters. First of all, the question arises as to alternative forms of legal written assurance. The most important question is whether we will find motives to suggest preference or rejection of certain legal forms of assurance, first of all of sovereign privilege granting. For this we need a comparative study of sovereign as well as private charters, and research into the strategies for achieving legal assurance and also into contemporary forgeries.

3. Systematic research on the question of the chances of survival and the chances of loss of Carolingian charters. Certain charter types had better chances of surviving than others. My research has already produced clear results for "mandates". The lack of graphic symbols providing legal proof, as well as the content of these documents, led to great losses. These questions must also be asked for other types of charters.³² Aside from the remarks of Peter Johanek on the *formulae imperiales* of the chancery of Louis the Pious, these problems have been so far mostly left untouched.³³

4. Systematic research into confirmations, their various forms and goals. Research into these problems is offered for example by the volume of *pancartes monastiques*,³⁴ which appeared a short time ago, and whose results must be applied to the problem posited here.

5. Research into the formal changes of Carolingian sovereign charters. Late Carolingian charter production is totally rooted in the traditions of the early Carolingians. Under Charlemagne, the charter of the mayor of the

³² MERSIOWSKY, "Graphische Symbole", pp. 340 ff.; MERSIOWSKY, "Regierungspraxis", pp. 118-124. See also the contribution of Georges Declercq to this volume.

³³ P. JOHANEK, "Herrscherdiplom und Empfängerkreis: Die Kanzlei Ludwigs des Frommen in der Schriftlichkeit der Karolingerzeit", in: *Schriftkultur und Reichsverwaltung unter den Karolingern*, pp. 167-188, esp. pp. 184-188.

³⁴ *Pancartes monastiques des X^e et XI^e siècles: Table ronde organisée par l'ARTEM, 6-7 juillet 1994, Nancy*, ed. M. PARISSÉ, P. PÉGEOT and B.-M. TOCK (Turnhout, 1998).

palace, which was related to both the Merovingian royal charter and the Frankish private charter, gradually developed into high Carolingian charter production, which found its classical expression under Charlemagne's son, Louis the Pious. It was gradually fine-tuned from the most ceremonial bulled privileges to the letter-like simple mandate. In the West and East Frankish realms, charters developed differently.³⁵ The variation in external presentation, the fine tuning from the most ceremonial privilege down to the simple mandate was lost again. It should be researched whether changes in the role of the diploma and mandate in government practice and literacy are reflected in these differences.

All these questions and many more can only be presented at the moment as a survey of the problems. But I hope to be able to conclude this research to a certain extent this year. Whether all of the questions can be answered, whether all of the paths of inquiry will bear fruit, I cannot yet say. But it is worth trying, I believe.³⁶

³⁵ Cf. the survey of the typology in BAUTIER, "Les actes royaux"; JOHANEK, "Die Diplome". I am planning a comprehensive treatment: "Carta edita, causa finita: Zur Diplomatie Kaiser Arnolfs", in: *Kaiser Arnolf, Das ostfränkische Reich am Ende des 9. Jahrhunderts: Regensburger Kolloquium 9.-11.12.1999*, ed. F. FUCHS and P. SCHMID (Munich, forthcoming).

³⁶ At the time this lecture was prepared for publication, I had not yet been able to read P. WORMALD, *The Making of English Law: King Alfred to the Twelfth Century* (Oxford, 1999). Esp. pp. 81-92 are very important for the argument developed.

Country *Clerici* and the Composition of English Twelfth- and Thirteenth-Century Charters¹

DAVID POSTLES

The concept of textual “communities” was suggested by Brian Stock and he located its development in the eleventh and twelfth centuries.² What was intended by this term, of course, was the profound way in which, although orality remained vital and persistent, writing had an immense impact, so that, whilst literacy and orality were intertwined, yet there was a transition from pre-literacy to textuality. So, as Michael Clanchy has beautifully illustrated, written record became pervasive, even though it continued to have an inter-relationship with memory. Memory was not forgotten, as it were, but its role was transformed.³ The potential complexity of the interconnections between orality and literacy has recently been emphasised by David Olson, so that we can no longer consider a unilinear or unambiguous and uncomplicated impact of literacy, the introduction of syllogistic thought.⁴ There have, indeed, been

¹ I am inordinately grateful to Michael Clanchy for reading and commenting on an early draft of this paper; to Richard Childs and his colleagues at the West Sussex Record Office for a very helpful exchange of ideas; and to all the searchroom staff of the Northamptonshire Record Office (hereafter NRO) for their expert, as well as courteous, help with my requests. As the material from the NRO was collected and analyzed very late, the help and advice of this last group of people was of the highest value. I am grateful to the County Archivist of Northamptonshire and to the Fitzwilliam Trustees for permission to cite the Fitzwilliam MSS.

² B. STOCK, *The Implications of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton, 1983).

³ M.T. CLANCHY, *From Memory to Written Record: England 1066-1307*, 2nd. edn. (Oxford and Cambridge, Mass., 1993).

⁴ D.R. OLSON, *The World on Paper: The Conceptual and Cognitive Implications of Writing and Reading* (Cambridge, 1994), modifying paradigms suggested by J. GOODY, *The Logic of*

some sceptical reflections on how far writing altered the representation and perception of medieval thought.⁵ Equally, there has been a renewed interest in the collective or social aspects of remembering, with a pedigree back to Maurice Halbwachs.⁶

The exact nature of the impact of writing is thus contested and debated, but in terms of pragmatic literacy, the practice and experience of everyday life was changed. At the very least, textuality represented a familiarity with documents, a quotidian experience of documents which by the late fourteenth century had profound implications.⁷ That experience, of course, might reside in the symbolism of the written word and the documents themselves as symbols, as much as the lexical and syntactic content of the written word, and so there is an issue of the semiotics of writing as communication. All those considerations, however, relate to the consumption of writing and documents, how, as Roger Chartier might have it, writing was not only experienced, but also appropriated.⁸

It is paradigmatic therefore that a textual "community" is interpreted not by the quantity of people who were literate in the sense of able to write (or read), but by the impact of writing on orality and the development of a familiarity with documents. As Michael Clanchy has demonstrated, in the rural context that familiarity with documents was most likely contact with charters. Moreover, although access to documents might have marked off free from unfree, it did not unambiguously do so in rural society in the context of charters.⁹ The

Writing and the Organization of Society (Cambridge, 1986) and W. ONG, *Orality and Literacy: The Technologizing of the Word* (London, 1982).

⁵ M.J. CARRUTHERS, *The Book of Memory: A Study of Memory in Medieval Culture* (Cambridge, 1990). On the other hand, it might be considered how restrictive some oral practices can be, particularly rituals, which impoverish speech and response: M. BLOCH, *Ritual, History and Power: Selected Papers in Anthropology* (London, 1989); these were precisely the rituals which co-existed alongside our charters.

⁶ J. FENTRESS and C. WICKHAM, *Social Memory* (Oxford, 1988); P. CONNERTON, *How Societies Remember* (Cambridge, 1989). Again, however, memory is not an unambiguous concept or practice and it is not always immutable. This direction was intimated again by M.T. CLANCHY, "Remembering the past and the good old law", *History* 55 (1970), pp. 166-172.

⁷ S. JUSTICE, *Writing and Rebellion: England in 1381* (Berkeley, 1994).

⁸ R. CHARTIER, *Cultural History* (Oxford, 1988); see also M. DE CERTEAU, *The Practice of Everyday Life* (Berkeley, 1988); for a later period, J. BARRY, "Literacy and literature in popular culture: Reading and writing in historical perspective", in: *Popular Culture in England, c. 1500-1850*, ed. T. HARRIS (London, 1995), pp. 69-94.

⁹ CLANCHY, *From Memory to Written Record*, pp. 49-50, referring to the *Carte Nativorum*; *Carte Nativorum: A Peterborough Abbey Cartulary of the Fourteenth Century*, ed. C.N.L. BROOKE and M.M. POSTAN (Oxford, 1960: *Northamptonshire Record Society* 20). He might equally have referred to the earlier confiscation of charters of unfree peasants of Brancaster (Norfolk) by the Abbot of Ramsey in 1239, as alluded to in *Carte Nativorum*, p. XXXII, note 1.

numbers of charters of the free peasantry might thus extend not only to the hundreds of thousands, but millions.¹⁰ Whilst, therefore, it is important to understand the consumption of charters, as they formed part of the experience of peasant life, it is perhaps also important to know something of the producers of these charters: who they were; how they represented themselves; and perhaps also how they influenced the diplomatic of charter drafting. For, although charters of the thirteenth century appear superficially to be more formulaic than the inchoate expression of the twelfth century, in terms of clauses expected and restrictions on language, the intentions of donors were more complicated in the thirteenth, with a greater concern, for example, for remainders and reversions, and entails, if all the parties were lay. The *scriptor* of local charters—or as he is memorably described by Paul Hyams, “the flat-arsed conveyancer”—was fundamental to the evolution of the “common law” in its widest context not only in the twelfth but in the thirteenth century as well. The product of the *scriptor* was thus not only many persons’ experience of writing, but also one of their experiences of law.¹¹

One of our assumptions, however, is that charters to the religious were drafted by the beneficiaries. There is now also sufficient evidence to illustrate that the laity of baronial status had their own loose organisations, which, although they might not produce all the charters of a baronial benefactor, might still compose some of them, and that such organisations were likely to be more consolidated by the end of the twelfth century. All that seems reasonably clear. Who, however, was composing and drafting charters for the lesser laity, both in transactions between themselves, but also for their benefactions to religious houses?

Immediately, however, problems are inherent in the identification of these *scriptores*. It has been demonstrated by Hodson that charters were not necessarily written by the last witness, those who attested finally and who were designated *clericus*.¹² There are other reasons than those advanced by Hodson, why circumspection is necessary in the case of the *clericus* as witness, whether finally or medially in the list of witnesses, the first of which is the ambiguity of meaning of the term *clericus* which does not define one single, precise status. Many attestation clauses, moreover, contain more than a single *clericus*, which is, for the purpose of attestation, entirely appropriate, for the *clericus*, if an

¹⁰ CLANCHY, *From Memory to Written Record*, p. 50.

¹¹ P. HYAMS, “The charter as a source for the early common law”, *The Journal of Legal History* 12 (1991), pp. 173–189; for the immortal phrase, p. 189, note 55. My consideration of charters has benefited enormously from the writings of and discussion with Paul Hyams.

¹² J.H. HODSON, “Medieval charters: the last witness”, *Journal of the Society of Archivists* 5 (1974), pp. 71–89.

incumbent, was a local dignitary of reputation. Where, furthermore, there was an ecclesiastical interest, such as in benefactions to religious houses, it was again logical to have clerical representatives in the witness clause, perhaps even as *ex parte* witnesses, sometimes then indicated in the final phrase *et multis aliis clericis et laicis*. It might almost be normative, and certainly precautionary, thus to include *clerici* as witnesses.¹³

Assuming that the *clericus* as last witness does not necessarily denote the writer of the charter, do other designations exist which might provide an indication? Not infrequently, the last witness is described by a *nomen* and the *cognomen* or designation *scriptor*.¹⁴ Conceivably, these *scriptores* produced the charters to which they acted as last witness. Additionally, a Goring charter of ca. 1200 was attested in the final position by Hugh *compositor*, another charter of ca. 1180 by Henry the notary, and a FitzHarding charter of the late twelfth century by Richard *notarius*.¹⁵ What might be assumed, moreover, from the attestation in the final place by Drew *breuifactor* in 1135×1154?¹⁶ When Alice de Gant made a benefaction to Fountains Abbey in 1144×1156, her charter was attested by William *cursor meus*, but medially in the list of witnesses.¹⁷ In some other charters, the last witness is designated *notarius* or *notator*, as Emgenulf

¹³ A good example is MS London, British Library, Add. 40008, f. 87v.

¹⁴ *Eynsham Cartulary*, ed. H.E. SALTER, 2 vols. (Oxford, 1907-08: *Oxford Historical Society* 49, 51), I, pp. 117-118 (Walter *scriptor*, 1160×1180), 403-404 (John *scriptor*, ca. 1260); *Reading Abbey Cartularies*, ed. B.R. KEMP, 2 vols. (London, 1986-87: *Camden Society*, 4th series, 31-33), p. 114 (No. 831) (Hamo *scriptor*, 1173×1186, probably the Hamo de Radyng' at p. 115 (No. 833)); *Fitznells Cartulary* ..., ed. C.A.F. MEEKINGS and P. SHEARMAN (Guildford, 1968: *Surrey Record Society* 26), p. 3 (No. 3) (William *scriptor*, ca. 1250); *Charters and Customs of the Abbey of Holy Trinity Caen*, ed. M. CHIBNALL (London, 1982: *British Academy Records of Social and Economic History*, n.s. 5) pp. 3-4 (No. 4) (Osbert *scriptor*, 1175×1188); *A Collection of Charters Relating to Goring* ..., ed. T.R. GAMBIER-PERRY (Oxford, 1931: *Oxfordshire Record Society* 13), p. 271 (No. 410) and p. 288 (No. 438) (Henry *scriptor* and Hugh de Meriton' *scriptor*, 1155 and ca. 1190); *The Cartulary of Bradenstoke Priory*, ed. V.C.M. LONDON (Devizes, 1979: *Wiltshire Record Society* 35), p. 51 (No. 88) and p. 53 (No. 96) (William *scriptor*, 1200×1240); *The Cartulary of Cirencester Abbey, Gloucestershire*, ed. C.D. ROSS (London, 1964), p. 598 (No. 723) (William *scriptor*, 1176×1181); *Early Yorkshire Charters*, ed. W. FARRER and C.T. CLAY, 12 vols. (Leeds, 1965: *Yorkshire Archaeological Society Record Series Extra Series* 10), p. 102 (No. 60) (William *scriptor*, late twelfth-early thirteenth century); G.H. FOWLER, "Records of Harrold Priory", *Bedfordshire Historical Record Society* 17 (1935), pp. 46-47 (Baldwin *scriptor*, 1138×1147).

¹⁵ *Charters Goring*, p. 298 (No. 455) and *HMC Report on the MSS of Lord De L'Isle and Dudley*, I (London, 1925), p. 37; *Descriptive Catalogue of the Charters and Muniments ... at Berkeley Castle*, ed. I.H. JEAYES (Bristol, 1892), p. 15 (No. 25).

¹⁶ *Early Yorkshire Charters*, 7, p. 60 (No. 12).

¹⁷ *Charters of the Honour of Mowbray 1107-1191*, ed. D.E. GREENWAY (London, 1972: *British Academy Records of Social and Economic History*, n.s. 1), p. 79 (No. 106).

notator who attested finally the charter of Richard de Humez, constable of Normandy, to Walter Brito, lord of Wolfhamcote, in 1170×1180, although other self-designated *notarii* of the thirteenth century seem to have been mere country *scriptores* as will be illustrated below.¹⁸

Perhaps one of the most distinctive of final witnesses described as *scriptor* remains the William who attested charters relating to Wardon Abbey in the late twelfth century, variously described as William *scriptor* and William *scriptor de Wardon*.¹⁹ By this description, William acted as witness to eight Wardon charters, but is it possible that he was identical with the William *paruus clericus* who attested another five Wardon charters, but not all as final witness, and the William *le petit cleric* who attested others?²⁰ Although these alternative forms of description might extend the list of potential writers of charters, they do not, however, assist in identification of *scriptores*, because the form is usually terse and uninformative.

Without recourse to precise palaeographical analysis, which is not often possible, the principal evidence thus becomes clerical subscriptions, in which the *clericus* or *scriptor* professes to have written, composed, or made the charter or writing. In the context of baronial households, Webber has expressed some circumspection as to the precise meaning of the terms *fecit* and *scripsit* as scribal subscriptions, so that, in those circumstances, the invocation of those terms might imply “only a general responsibility for seeing that a piece of writing was completed, and thus did not necessarily refer to the process of writing itself.”²¹ Whilst that might have been the experience in baronial households as they developed more consistent writing offices in the late twelfth century, or episcopal chanceries, or even in the development of town clerks, it seems more probable that country *clerici*, whoever they might have been, were responsible for the entire production of charters.²² Nevertheless, subscriptions provide their

¹⁸ *The Langley Cartulary*, ed. P.R. COSS (Stratford upon Avon, 1980: *Dugdale Society*), p. 116 (No. 507) for Emgenulf.

¹⁹ G.H. FOWLER, “The cartulary of the abbey of Old Wardon”, *Bedfordshire Historical Record Society* 13 (1930), pp. 33-34 (No. 36), pp. 180-181 (Nos. 235-236), pp. 226-230 (Nos. 294, 297, 299), p. 240 (No. 320); note also the last witnesses in other Wardon charters (Elias *scriptor*, Bartholomew *scriptor*, and Roger *scriptor*: *ibid.*, pp. 61, 180, 227-229 (Nos. 61, 235, 298-299)).

²⁰ FOWLER, “Cartulary Old Wardon”, pp. 28-29, 31-33, 223-224, 229 (Nos. 29, 32, 34-35, 43, 290), but confusion intervenes because of the local Mauclerc family, a *cognomen* which in itself posits questions.

²¹ M.T.J. WEBBER, “The scribes and handwriting of the original charters”, in: *The Earldom of Chester and its Charters*, ed. A.T. THACKER (Chester, 1991: *Journal of the Chester Archaeological Society* 71), p. 139.

²² For baronial *scriptores*, cf. WEBBER, “The scribes and handwriting”, pp. 137-152 and also R.B. PATTERSON, *Earldom of Gloucester Charters: The Charters and Scribes of the Earls and*

own difficulties, for they are frequently terse to the point of being uninformative for prosopographical purposes: who is the William *clericus qui hanc cartam scripsit*? That truncated formula—a *nomen* and *clericus* without further identification—is almost normative. Conversely, therefore, when proper identification of the *scriptor* is achieved, how representative is the sample or corpus of identified *clerici*?

Indeed, clerical subscriptions appeared in only a minute proportion of charters, for Hodson discovered only 4 of the 126 charters in the Middleton manuscripts included one and merely three of the 55 in the early Northamptonshire charters edited by Stenton.²³ Of more than 4000 charters in *Early Yorkshire Charters*, less than a dozen have clerical subscriptions and on a smaller scale none of the 152 Glapwell charters contains a subscription.²⁴ Substantially between lay parties, the charters at Berkeley Castle edited by Jeayes, amount to some 450 instruments, only eight of which have some form of clerical subscription. If are considered also editions of cartularies in which the witness lists *seem* to have been transcribed in full, then the Guisborough cartulary, with more than 1100 instruments, contains only one charter with a subscription; in the Canonsleigh cartulary, only three out of 280 charters contain a subscription; and the Luffield cartulary, with more than 700 documents, produces only five charters with subscriptions.

What is quite clear, however, is that when a subscription was included in the witness list, it was the final attestation; it was appended. Less than 5 percent of subscriptions occurred medially in the witness list.²⁵ Clerical subscriptions are thus normatively the last witness. Why the clerical subscription was

Countesses of Gloucester to A.D. 1217 (Oxford, 1973), pp. 16-21. *Charters Mowbray*, pp. LXVI-LXX; for the position of a *cancellarius* with respect to charters, *Early Yorkshire Charters*, 4, p. 45 (No. 44) and Pl. 35 (Hamelin *cancellarius* of Conan, duke of Brittany and earl of Richmond, 1156x1158 and 1158); for episcopal chanceries, cf. C.R. CHENEY, *English Bishops' Chanceries 1100-1250* (Manchester, 1950); for the development of town clerks, cf. G. POLLARD, "The medieval town clerks of Oxford", *Oxoniensia* 31 (1966), pp. 43-76. It might be noted, however, that when Ivetta Map transferred 6 acres to Walter de Bannebiria, clerk of the county court of Gloucester, in the early thirteenth century, the memorandum states "*et ei cartam exinde fecit, hoc modo*" (in: *Landboc sive Registrum Monasterii de Winchelcumba*, ed. D. ROYCE, 2 vols. (Exeter, 1892-1903), 1, p. 151); it is interesting to note that whilst he was county clerk, Walter was also incumbent of Enstone, a living in the gift of Winchcombe (*ibid.*, 1, p. 152, note 2).

²³ HODSON, "Medieval charters", p. 71.

²⁴ The figure for the total number of charters in *Early Yorkshire Charters* is from P. HYAMS, "The charter", p. 173; the subscriptions I have counted myself.

²⁵ Examples are: *Charters Goring*, p. 82 (No. 113); *Luffield Priory Charters*, ed. G.R. ELVEY, 2 vols. (Oxford, 1968-75: *Northamptonshire Record Society*, 22, 26), 1, p. 113 (No. 119); and Bartholomew who consistently included his subscription medially: *Basset Charters c. 1120-1250*, ed. W.T. REEDY (*PRS* n.s. 50, 1989-91), pp. 115 (Nos. 177-178) and 118 (No. 182).

appended at all is an unresolvable question, perhaps for self-advertisement or self-fashioning if charters were still read out in assemblies.²⁶

Before discussing the identification of some of these *scriptores*, some further elaboration of the potential context might be illuminating. Even by the late twelfth century, a peasant land market had been stimulated, so that we have a sample of over 150 charters of the free peasantry of the Northern Danelaw in the late twelfth and early thirteenth centuries.²⁷ In areas of relatively higher proportions of free tenants, smaller and more fragmented holdings, and relatively fewer restrictions, such as East Anglia, peasant transactions in land might have been more precipitate.²⁸

During the thirteenth century, there was a proliferation of peasants' use of charters in East Anglia, so that there exist at least 130 charters for essentially peasant transactions in Holkham (Norfolk) alone over a period of less than a hundred years in the late thirteenth and early fourteenth century.²⁹ There was thus considerable opportunity for occasional additional income from the writing of charters, if only in some areas of England. On palaeographical analysis, it is clear that several *clerici* composed charters relating to lands in the same village over a short period of time, for fourteen charters relating to Stickney (Lincs.) between 1170 and 1198, for example, are seemingly produced in seven different hands.³⁰

On the other hand, there was some intrusion into the production of charters relating to small parcels of rural land, illustrated most prominently by Louis *clericus* who sometimes styled himself Louis *clericus de Rokyngham*.³¹ Louis

²⁶ For an example, *Early Yorkshire Charters*, 5, p. 59 (No. 149): Torfin to Easby Abbey: "*Et ut hujus donacionis mee elemosina firmior sit eam coram baronibus et placitis Richem' recitari feci*" (1162x1194). It is perhaps a mild form of self-representation by comparison with the self-fashioning conceived later by the New Historicists: S. GREENBLATT, *Renaissance Self-Fashioning: From More to Shakespeare* (Chicago, 1980).

²⁷ F.M. STENTON, *Free Peasantry of the Northern Danelaw* (Oxford, 1920).

²⁸ P.R. HYAMS, "Origins of a peasant land market in England", *Economic History Review*, 2nd series, 23 (1970), pp. 18-31.

²⁹ W. HASSALL and J. BEAUROY, *Lordship and Landscape in Norfolk 1250-1350: The Early Records of Holkham* (Oxford, 1993: *British Academy Records of Social and Economic History*, n.s. 20).

³⁰ D.M. OWEN, "Some Revesby charters of the soke of Bolingbroke", in: *A Medieval Miscellany for Doris Mary Stenton*, ed. P.M. BARNES and C.F. SLADE (London, 1962: *PRS* n.s. 36), p. 226.

³¹ *Facsimiles of Early Charters from Northamptonshire Collections*, ed. F.M. STENTON (Oxford, 1930: *Northamptonshire Record Society* 4), pp. 30, 34-35; *Basset Charters*, pp. 12, 31, 34-36 (Nos. 20, 61, 66, 68); *The Beauchamp Cartulary Charters 1100-1268*, ed. E. MASON (Oxford, 1980: *PRS* n.s. 43), pp. 109-110, 112-115, 124, 127, 131-133 (Nos. 187-188, 190-192, 194-196, 213, 218, 227, 229); *Westminster Abbey Charters 1066-c.1214*, ed. E. MASON a.o. (London,

produced at least a dozen charters for small parcels of rural land in north Northamptonshire and Rutland to which he appended his clerical subscription as last witness, invariably as simply *qui hanc cartam scripsit*. Four of the charters concerned small amounts of land quitclaimed to their lord, Ralph Basset, by Ralph's tenants, assigned by Reedy to 1217×1241. Nevertheless, Louis has been identified as a minor official of the entourage of Rockingham castle in the employment of Robert Mauduit, the royal chamberlain, for whom Louis produced eight charters with his clerical subscription for the acquisition of small parcels of land by Mauduit in 1194×1217.³² So also Louis compiled a charter for Mauduit's wife, Isabel Basset, for land in Westminster given by her to Westminster Abbey some time before 1214, so his production for the Basset-Mauduit axis is further expanded.³³ When William Postard, abbot of Westminster, licensed Robert Mauduit to have a chapel in his house near Longditch, in 1195×1198, it was Louis *clericus* who composed the chirograph.³⁴ Louis, however, also composed another charter relating to annual rents of 1s. 8d. and 1s. 2d. in Westminster transferred to the Abbey by Nicholas son of Geoffrey son of Frethesent *de Westminster*, of whom nothing is known.³⁵ It is possible that Louis was a minor official of the Exchequer, as suggested by Emma Mason, although he seems to appear only once in the Pipe Rolls when in 1206 a Louis *clericus* received 20s. from Hampshire "*ad luminar' thesauri R[egis]*".³⁶ Some intrusion into the world of country *clerici* was thus experienced in this small part of the country as some lords acquired or conveyed piecemeal small parcels of land.³⁷

Equally, it is clear that some unbeneficed clergy had an insubstantial existence, perhaps occasionally leading to deviance. For example, Hugh le Chapeleyn, Gregory le Clerk and Ralph del Pek' were all presented for battery, exacted and outlawed; they were found not to be in frankpledge because they were clerics and it was also reported that they had no chattels, although it must be

1988: *London Record Society* 25), pp. 260, 280 (Nos. 422, 443).

³² *Beauchamp Cartulary*, p. XXXII.

³³ *Westminster Abbey Charters*, p. 260 (No. 422).

³⁴ E. MASON, "The Mauduits and their chamberlainship of the Exchequer", *Bulletin of the Institute of Historical Research* 49 (1976), p. 19 (Appendix).

³⁵ *Westminster Abbey Charters*, p. 280 (No. 443).

³⁶ MASON, "The Mauduits", p. 8; *Pipe Roll-8 John (1206)* (PRS n.s. 20, 1942), p. 156.

³⁷ It is clear that Louis did not hold the living of Rockingham: *Rotuli Hugonis de Welles Episcopi Lincolnensis A.D. MCCIX-MCCXXXV*, ed. W.P.W. PHILLIMORE (Lincoln, 1912: *Lincoln Record Society* 3), 1, p. 56; 2, pp. 99, 105, 141, 194; *Rotuli Roberti Grosseteste...*, ed. F.N. DAVIS (Horncastle, 1914: *Lincoln Record Society* 11); J. BRIDGES, *The History and Antiquities of Northamptonshire ...* 2 (Oxford, 1791), pp. 335-336, although the living was in the gift first of the Queen and then the King at this time.

considered that undervaluation of chattels might have been common in presentments at Crown Pleas.³⁸ When a dispute arose amongst three clerks walking through the village of Slape, one of the clerks, Robert son of a reeve and thus presumably of unfree origin, killed another, Peter, with an axe. Robert's status as a clerk was confirmed and he too was presented as having no chattels. Another Robert, a clerk of Thame, was presented at Crown Pleas as a receiver of stolen goods and an associate of thieves; he was claimed by the dean of Oxford for the bishop of Lincoln. Finally, as another example, when William Hert, clerk, killed his brother, Walter, a layman, the accused, it was presented, had no chattels.³⁹ The presentation of no chattels remains, of course, problematic, as Hanawalt has indicated, but there is every indication that some *clerici* had an insubstantial existence, and how that position was integrated into manorial peasant society has been illuminated by Robert Swanson.⁴⁰ In some cases, the brush with the law, in Crown pleas, resulted from the production of documents by *clerici*, but as forgeries, and so the clerks who escaped from gaol in Salisbury in 1249, Henry le Fort, but more significantly Richard le Escryvain, had been imprisoned for forging documents—*pro falsis bullis*.⁴¹ The by-employment of other lower clergy in writing is fortuitously revealed in another Crown plea, for William *capellanus* of Malmesbury, Thomas the goldsmith's son, and Adam and John, *scriptores extranei*, became embroiled in a scuffle in a drinking session in Malmesbury in which their adversary was killed; most were consequently outlawed and it was reported that Adam and John, the *scriptores*, had no chattels.⁴²

Some peasant charters might have been composed by clerks of this status. Consider, for example, the charter produced and attested finally by *Ricardo carte notario* which pertained to a "field" (*campus*) called *Middelham* near Billingshurst in West Sussex, conveyed by Adam de Eytun' to his brother, Ralph *sutor* and Ralph's wife, Richilda, for a consideration of one mark of silver. Despite the self-fashioning of the *clericus* or *scriptor* as *notarius*, in fact the charter contains at least two Latin infelicities: "*Iacet ex parte orientali terre*

³⁸ G.H. FOWLER, "Calendar of the Roll of Justices in Eyre 1247", *Bedfordshire Historical Record Society* 21 (1939), p. 159 (No. 640); B. HANAWALT, *Crime and Conflict in English Communities 1300-1348* (Cambridge, Mass., 1979), pp. 129-130.

³⁹ *The Oxfordshire Eyre 1241*, ed. J. COOPER (Oxford, 1989: *Oxfordshire Record Society* 56), pp. 128, 143, and 147.

⁴⁰ R.N. SWANSON, "Clergy and manorial society in late medieval Staffordshire", *Staffordshire Studies* 5 (1993), pp. 13-34.

⁴¹ *Crown Pleas of the Wiltshire Eyre 1249*, ed. C.A.F. MEEKINGS (Devizes, 1961 for 1960: *Wiltshire Archaeological and Natural History Society Records Branch* 16), pp. 257-258 (No. 565).

⁴² MEEKINGS, *Crown Pleas of the Wiltshire Eyre*, p. 155 (No. 18).

Willelmi fabris"; and "*dedit michi predictus Radulphus et Richilda unam marcam argenti*".⁴³

It is clear that Richard had not the skills, qualification or the status of a notary public and it is probable that he composed this charter before notaries public officially appeared in England, assumed to be *ca.* 1258.⁴⁴ *Notarius* is thus likely to have been used, as also *notavit*, simply to denote writing, but may also relate to the address or notification of charters, as in the occasional address *Notum sit*. Richard did not describe himself as a *clericus*, but it would be ambiguous to argue that on this evidence he was not in clerical orders, for several *clerici-scriptores* have been discovered who used their title *clericus* sometimes in witness lists, but not in others.

Richard is then potentially one of the country "*clerici*" who locally composed charters relating to small amounts of rural land for the peasantry. A much greater appreciation of this role is glimpsed through the activity of Eustace *scriptor* in Castor in Northamptonshire. There was indeed a proliferation of charters relating to peasant land in this vill near Peterborough, over 250 charters before *ca.* 1310.⁴⁵ All deal exclusively with roods and acres of land. The number of 250 charters relates to the whole of the thirteenth century and first decade of the fourteenth, but Eustace's active life as a local *scriptor* was more circumscribed. Only two charters ostensibly composed by him bear dates: 1292 and 1295.⁴⁶ A multitude, however, belong to before 1290 since they contain no *Quia Emptores* clause, but it equally appears from charters with the same parties in the *Carte Nativorum* that the period of his charters might have extended to *ca.* 1305.⁴⁷ It is possible to identify at least 33 charters which were compiled by Eustace through various criteria. These 33 charters include Eustace as the last witness attesting as Eustace *scriptor*, but that is not the sole criterion. The hand of all these charters is distinctive: it is archaic for this time, being upright, with little looping or flourishing, and the initial S of *Sciant* is diagnostic (amongst other features). The other criteria are specific diplomatic features which are elucidated further below. On these criteria, it is fairly certain that he

⁴³ West Sussex Record Office, Wiston MS 4358 (which can be viewed at <http://www.le.ac.uk/elh/pot/wsussex/wiston.html>).

⁴⁴ C. CHENEY, *Notaries Public in England in the Thirteenth and Fourteenth Centuries* (Oxford, 1972), p. 15.

⁴⁵ NRO, Fitzwilliam MSS 1-220 and *Carte Nativorum*, pp. 111-122 (Nos. 352-379).

⁴⁶ NRO, Fitzwilliam MSS 87 and 91.

⁴⁷ *Carte Nativorum*, pp. 111-117 (Nos. 352, 354, 358, 364-365) for John *ad crucem* (1293-1299); p. 115 (361) for Peter le Hayward (1305); p. 114 (No. 357) for Matilda *relicta Ricardi le Porter* (1295); pp. 111-114 (Nos. 352, 354, 358) for Reginald *filius Walteri attelanesende* (1293-1299).

contributed a minimum corpus of 33 charters.⁴⁸ It is, however, possible that his contribution was larger, for there are many contemporary charters which he does not witness which seem to be in his distinctive hand and with diplomatic features which might be associated with him.⁴⁹

The 33 charters identified with Eustace relate to 20 different donors and 20 different beneficiaries, all of low status, mostly peasants, and the size distribution of the land involved is: one rood to one and a half roods: ten charters; about half an acre: nine charters; one acre to three acres: thirteen charters; and a messuage: one charter. The concern is thus with small amounts of land conveyed between peasants within a single vill.

Apart from the distinctiveness and archaism of the hand, what is significant about Eustace's charters is three elements of the diplomatic: the phrase for "by this present charter" in the disposition; the convoluted description of assigns in the warranty clause; and the elaboration of the sealing clause. If we take the 33 charters certainly attributable to Eustace, 29 contain in the disposition "*et hac presente* [sic] *carta*" and only two the correct "*et hac presenti carta*".⁵⁰ Whilst some other *scriptores* mistakenly employed "*presente*", many inserted correctly "*presenti*".⁵¹

The second distinctive feature of Eustace's charters is his expression of assigns in the warranty clause. Most significant is the form: "*vel cui quando ubi dare Legare vendere uel tempore mortis assignare voluerit*" which occurred in 18 of his charters, the most important element being the "*tempore mortis*".⁵² In two further charters, this precise form, including "*tempore mortis*", is expanded by the verb "*inuadiare*".⁵³ Three other clauses are particularly interesting in that they introduce instead of "*tempore mortis*", the phrase "*tam in egritudine quam in sanitate*".⁵⁴ Finally, two charters have a more compressed form: "*et cuicumque et quandocumque dare legare vendere uel assignare voluerit*".⁵⁵ Again, it

⁴⁸ NRO, Fitzwilliam MSS 63, 87, 91, 133-138, 141-145, 154-155, 157-158, 160, 162, 166-168, 181-182, 184-185, 190-192, 197-198, and 200; the catalogue by Jeayes is inconsistent in its transcription of the witnesses and it is necessary to examine all charters for Eustace as the last witness.

⁴⁹ NRO, Fitzwilliam MSS 70, 75, 173-174, 183, 187, 191 and 209 are but examples.

⁵⁰ NRO, Fitzwilliam MSS 168 and 197 have the correct forms; two others were quitclaims and so do not have this dispositive clause.

⁵¹ Examples of charters in other hands with *presente* are NRO, Fitzwilliam MSS 72 and 213, the latter interestingly from 1308, after Eustace's time.

⁵² NRO, Fitzwilliam MSS 87, 135-136, 138, 141, 143-145, 154-155, 158, 160, 166-167, 185, 192, 198, and 200.

⁵³ NRO, Fitzwilliam MSS 142 and 181.

⁵⁴ NRO, Fitzwilliam MSS 63, 162 and 184.

⁵⁵ NRO, Fitzwilliam MSS 93 and 157.

must be admitted that, whilst many charters relating to land in Castor had a more peremptory form for assigns, florid descriptions of assigns in the warranty clause were not unusual in other Castor charters.⁵⁶ They were not exclusive to Eustace, although “*tempore mortis*” was distinctive of him. Two other points might be made, the first of which is that it is very late for such elaborate expressions for assigns—the late thirteenth century. The second point, more speculative, is that Eustace might have been an exemplar of this expression and, indeed, such elaborate clauses continued in use after him.⁵⁷

Finally, in these distinctive diplomatic elements is the inclusion in Eustace’s charters of the nouns “*Warantizacio et defensio*” in the sealing clause alongside, for example, “*donatio*”. This combination occurred in 23 of the 33 charters, whilst two, which were quitclaims, excluded any such sealing clause.

Whilst some other *scriptores* of Castor charters also embraced some of these forms, many other local *scriptores* preferred forms which were more cursory and, indeed, more like the common form of charters. In this part of Northamptonshire are encountered some charters with a distinctively local form of expression in which Eustace was an emphatic example.

The possibility that he was a progenitor of these forms or at least that there was a mimetic influence with other *scriptores* adopting his forms is speculative and depends partly on the identification of Eustace. That is elusive, but he was certainly not Eustace Cordel of the local Cordel family which was otherwise so involved in these charters, for both Eustace Cordel and Eustace *scriptor* attested the same charter.⁵⁸ It is, however, possible that he was the *Dominus* Eustace *capellanus* who attested in initial position some charters of the mid thirteenth century.⁵⁹ That identification would allow for the archaism both of the hand in the later charters and the elements of diplomatic. The second argument for a transmission from Eustace is the persistence of *presente* in the disposition of some charters.

A potential example of a lay *scriptor*, however, is Benedict de Stapilton of Barforth, who composed a charter relating to 4 acres in Barforth for Joan, who made the gift of this small amount of land to her prospective son-in-law as her daughter’s *maritagium* in the late twelfth century.⁶⁰ In three witness lists in which he occurred Benedict was never described as a *clericus*, nor did he fash-

⁵⁶ NRO, Fitzwilliam MSS 65-66 and 203 are examples of this circumlocutory expression of assigns.

⁵⁷ Examples are NRO, Fitzwilliam MSS 210, 213, 217 and 219-220 (1306-1310).

⁵⁸ NRO, Fitzwilliam MS 144.

⁵⁹ NRO, Fitzwilliam MSS 53 and 62 are examples.

⁶⁰ *The Pudsey Deeds*, ed. R.P. LITTLEMORE (Leeds, 1916: *Yorkshire Archaeological Society Record Series* 56), p. 300 (No. 332).

ion himself as one in his subscription. In 1270, he held a toft in Barforth and about that time he had a son, Geoffrey.⁶¹ None of these features precludes his having proceeded into minor orders, but there is no evidence that he had taken that route. Taking the same criteria, which are by no means conclusive, Ralph Hardwine appears to have been a non-clerical *scriptor*, that is a layman, for when he added his clerical subscription to a single charter (as far as is so far discovered) in 1214×1220, he did not employ the term *clericus*. Equally, when he attested four other local charters in a medial position, he was not ascribed the term *clericus*.⁶² Perhaps further confirmation of his non-clerical status ensues from his acting as a juror for the inquest into the customs and services of Wainfleet in 1234, again without the title *clericus*.⁶³ In 1250, furthermore, he was the tenant in a final concord to whom half an acre in Burgh-le-Marsh was quitclaimed.⁶⁴ Nor does he seem to appear in the episcopal registers of Welles, although that too is not satisfactory evidence of status. It is possible too that Ralph arrab[i] was another lay *scriptor* who compiled a charter between Hugh de Segrave and William de Ostechurch' in the court of the Prior of Coventry.⁶⁵

Nonetheless, these *scriptores* of charters preponderantly described themselves as *clerici*, by which it must be assumed that they were in some sort of clerical orders, probably minor orders. In a sample of 126 *scriptores* who applied a subscription to charters, 68 had the self-attribution *clericus*, whilst a number had some more precise intimation of clerical orders: two priests in the higher orders, twenty *capellani*, and three deacons, and even including one monk.⁶⁶ It might perhaps be cautiously assumed that the self-designated *cle-*

⁶¹ *Pudsay Deeds*, pp. 302, 304-305, 312 (Nos. 335, 340-341, 338, 353).

⁶² *Registrum Antiquissimum of the Cathedral Church of Lincoln*, ed. C.W. FOSTER and K. MAJOR, 10 vols. (Lincoln, 1931-1973: *Lincoln Record Society* 6), pp. 44-46, 82 (Nos. 1804-1806, 698).

⁶³ *The Medieval Lindsey Marsh: Select Documents*, ed. A.E.B. OWEN (Lincoln, 1996: *Lincoln Record Society* 85), p. 131 (No. 88).

⁶⁴ *Final Concords of the County of Lincoln...*, ed. C.W. FOSTER (Horncastle, 1920: *Lincoln Record Society* 17), p. 85 (No. 115).

⁶⁵ NRO, Spencer MS 1542: "*qui hanc cartam scripsit*".

⁶⁶ Examples of such subscriptions are NRO, Spencer MSS 1120 and 1132 (for example, "*Willelmo clerico qui hanc cartam scripsit*"). The other references are: *The Cartulary of God's House, Southampton*, ed. J.M. KAYE (Southampton, 1976: *Southampton Record Society* 19-20), 1, pp. 153-154, 171-172, 178-179; *Charters of the Redvers Family and the Earldom of Devon 1090-1217*, ed. R. BEARMAN (Exeter, 1994: *Devon and Cornwall Record Society*, n.s. 37), pp. 66, 106-107, 146, 192, 196-197; *Charters Berkeley*, p. 324 (No. 2570); FOWLER, "Cartulary Old Wardon", p. 181 (No. 237); *Rufford Charters*, vols. 1-2, ed. C.J. HOLDSWORTH (Nottingham, 1972-74: *Thoroton Society Record Series* 29-30), p. 307 (No. 617); *Fitznells Cartulary*, p. 38 (No. 113); *The Cartulary of Missenden Abbey Part III*, ed. J.G. JENKINS (London, 1962: *Historical MSS Commission*, JP 1), 3, pp. 16 (No. 56) and 82-83 (No. 667); *Two Cartularies of Abingdon Abbey*,

ed. C.F. SLADE and G. LAMBRICK (Oxford, 1990-91: *Oxford Historical Society*, n.s. 32-33), 2, p. 139; *Registrum Antiquissimum Lincoln*, 3, pp. 191, 211; 4, p. 194; 6, pp. 79, 82, 123; 7, pp. 133, 199; 9, pp. 134, 303; The Prior's Kitchen, Durham Cathedral Archives, Finchale 4.1 Finc 11; *The Cartulary of Launceston Priory*, ed. P.L. HULL (Exeter, 1987: *Devon and Cornwall Record Society*, n.s. 30), p. 33 (No. 77); *The Cartulary of Canonsleigh Priory*, ed. V.C.M. LONDON (Exeter, 1965: *Devon and Cornwall Record Society* 8), pp. 33 (No. 91), 151 (No. 138); *Cartularium Prioratus de Gyseburne* ..., ed. W. BROWN (Durham, 1889: *Surtees Society* 86), 1, pp. 185-186; 2, pp. 69-70; *Medieval Deeds of Bath and District*, ed. B.R. KEMP (Castle Cary, 1974: *Somerset Record Society* 73), p. 43 (No. 73); *The Chartulary of Boxgrove Priory*, ed. L. FLEMING (Lewes, 1960: *Sussex Record Society* 59), pp. 33 (No. 34), 107 (No. 219); *The Chartulary of St John of Pontefract*, ed. R. HOLMES (Leeds, 1898-1902: *Yorkshire Archaeological Society Record Series* 25, 30), pp. 188-189, 192-193, 425; *The Sandford Cartulary*, ed. A.M. LEES (Oxford, 1938-41: *Oxfordshire Record Society* 19, 22), 1, pp. 49 (No. 60), 82-83 (Nos. 113-114), 152 (No. 210); 2, pp. 251 (No. 376), 257-258 (Nos. 385-387), 260 (Nos. 389-390), 269 (No. 406), 274 (No. 414), 306 (No. 471), 310-311 (Nos. 477-478); *Sibton Abbey Cartularies and Charters*, ed. P. BROWN (Ipswich, 1986-88: *Suffolk Record Society Suffolk Charters* 8, 10), 4, pp. 79 (No. 1136), 82 (No. 1139); *Luffield charters*, 1, pp. 99 (No. 99), 111 (No. 116), 187 (No. 194); 2, p. 89 (No. 393); *Lacock Abbey Charters*, ed. K.H. ROGERS (Devizes, 1979: *Wiltshire Record Society* 34), p. 114 (No. 464); *Cartulary Bradenstoke*, p. 52 (No. 89); *Facsimiles Northamptonshire*, pp. 30, 34-35, 52; *Basset Charters*, pp. 12 (No. 20), 30-31 (Nos. 60-61), 34-36 (Nos. 66, 68), 115 (Nos. 177-178), 118 (No. 182), 154 (No. 226); *Beauchamp Cartulary*, pp. 10, 55, 109-110, 112-115, 120, 124, 127, 129, 131-133, 177; *Westminster Abbey Charters*, pp. 245 (No. 404), 259-260 (Nos. 421-422), 280 (No. 443); MASON, "The Mauduits", p. 19; *The Norfolk Portions of the Chartulary of the Priory of St Pancras of Lewes*, ed. J.H. BULLOCK (Norwich, 1939: *Norfolk Record Society* 12), p. 59 (No. 191); *Report De L'Isle*, pp. 41, 96, 104, 117; *HMC Report on the MSS of the Duke of Rutland*, 4 (London, 1905), pp. 17, 78; *HMC Report on the MSS of Lord Middleton* (London, 1911), pp. 16, 34, 36; *Early Charters of the Cathedral Church of St Paul, London*, ed. M. GIBBS (London, 1939: *Camden Society*, 3rd series 58), p. 184 (No. 190); *Cartulary Cirencester*, 1, pp. 263 (No. 286/143), 277 (No. 304/163), 291 (No. 321/179); 2, pp. 558 (No. 662/899), 581 (No. 698/892), 588 (No. 709); *Early Yorkshire Charters*, 1, p. 253 (No. 333), 430 (No. 551), 448 (No. 570); 2, p. 462 (No. 1174); 7, p. 60 (No. 12); 8, pp. 188 (No. 133), 230 (No. 168); FOWLER, "Records of Harrold", p. 34 (No. 29); *Newington Longueville Charters*, ed. H.E. SALTER (Oxford, 1921: *Oxfordshire Record Society* 3), p. 92 (No. 121); G.P. MANDER, "Calendar of the early charters &c at the Wodehouse Wombourne", in: *Collections for a History of Staffordshire*, *William Salt Archaeological Society* (Stafford, 1928), p. 11 (No. 3); *Ancient Charters*, ed. J.H. ROUND (London, 1888: *PRS* 10), pp. 99-100 (No. 60); *The Cartulary of Worcester Cathedral Priory (Register D)*, ed. R.R. DARLINGTON (Worcester, 1968: *PRS* n.s. 38), p. 163 (No. 309); "An account of the family of Okeover, of Okeover, co. Stafford", in: *William Salt Archeological Society*, n.s. 7 (Stafford, 1904), p. 139; *Charters Berkeley*, pp. 11 (No. 16), 23 (No. 50), 114 (No. 354), 118 (No. 370), 129 (No. 416); *The Cartulary of the Priory of St Denys near Southampton*, ed. E.O. BLAKE (Southampton, 1981: *Southampton Record Society* 24-25), p. 195 (No. 336); *Pudsay Deeds*, pp. 120, 300; *The Couchier Book or Chartulary of Whalley Abbey*, ed. W.A. HULTON (Manchester, 1847-49: *Chetham Society* 10-11, 16, 20), 1, pp. 41, 137, 160; 2, pp. 400, 424, 660; *Cartulary of Oseney Abbey*, vols. 4-6, ed. H.E. SALTER (Oxford, 1934-36: *Oxford Historical Society* 97-98 and 101), 4, pp. 156 (No. 121), 271 (No. 217); 5, p. 272 (No. 755); *Langley Cartulary*, p. 103 (No. 446); *Cartulary of St Mark's Hospital Bristol*, ed. C.D. ROSS (Bristol, 1959: *Bristol Record Society* 21), pp. 92, 188,

rici were unbeneficed and that the *capellani* were stipendiaries. It is impossible to be certain, for in many cases the self-description is merely a *nomen* with the style *clericus*, but further, even when more information is provided, these men remain elusive because of the lack of episcopal registers for much of the period of their subscriptions except in the diocese of Lincoln. Moreover, Clanchy has argued that *clericus* is an ambiguous term by the thirteenth century, denoting some degree of learning, presumably including practical learning, rather than a rather strict demarcation between ecclesiastical and lay status, but whether that was as commonly understood as to inform designations in such documents as charters continues to be an open question.⁶⁷ Five *magistri* composed charters, but these too prove elusive and do not seem to be known graduates of Oxford.⁶⁸ Out of the subscriptions of about 125 different *clerici*, about 28 provided by no style for themselves, allowing the possibility—but no more—that they might have been lay *scriptores*. Orderic Vitalis contrasted the ability of *seigneurs* to compose charters by contrast with their counterparts across the Channel who had not the same faculty.⁶⁹ By the thirteenth century, members of knightly families in England did produce their own written documents and were *milites litterati*, as is demonstrated by the Hotot and de Bray estate records.⁷⁰ The composition of charters, on the other hand, was a more complex process than a redaction of documents into a lay cartulary or estate book even with some commentary, for charters required some form of legal expertise, however rudimentary, so that we might assume that the *scriptores* of charters had some specialised knowledge. Alongside those changing legal forms, however, persisted localised drafting peculiarities.

To return to Richard *notarius* in Sussex, it appears too that local traditions are represented through *scriptores*, as well as the influence of a developing common law in the thirteenth century. Many charters around Billingshurst, particularly between lay parties, consequently include a formula about fealty (*fidelitas*) rather than homage, although fealty usually succeeds homage and reference is not normally made to fealty in charters from elsewhere. Homage is not mentioned, and fealty seems to be substituted. A second local tradition

204, 251, 262; *Facsimiles of Early Cheshire Charters*, ed. G. BARRACLOUGH (Oxford, 1957), pp. 16 (No. 7), 31 (No. 14); *Carte Nativorum*, p. 70 (No. 498); *Landboc Winchelcumba*, pp. 472, 492.

⁶⁷ CLANCHY, *From Memory to Written Record*, pp. 226–230.

⁶⁸ A.B. EMDEN, *A Biographical Register of the University of Oxford to A.D. 1500*, 3 vols. (Oxford, 1958); thus Mr Henry de Lychefeld does not appear in volume 2.

⁶⁹ Cited by STOCK, *The Implications*, p. 75.

⁷⁰ CLANCHY, *From Memory to Written Record*, p. 228 for de Bray; E.J. KING, “Estate records of the Hotot family”, in: *A Northamptonshire Miscellany*, ed. E.J. KING (Northampton, 1983: *Northamptonshire Record Society* 32), pp. 11–12.

seems to be an assigns clause which includes the phrase *sanus vel eger*, which has not been encountered outside this localised area.⁷¹ Throughout the country, the assigns clause in any sort of codified arrangement, extended rather slowly, only complete in some areas by the 1230s. Regional differences seem to explain the different rate at which it was integrated into charters. In some areas, particularly the Northern Danelaw, the pledge in hand persisted into the late twelfth century and perhaps even later, but it is noticeable too elsewhere as a local tradition, as in Bedfordshire. No doubt the intentions of the beneficiaries informed these differences, but so too did localised traditions. Apparently the mimesis of these local traditions was represented through the localised drafting of charters by local *scriptores*.

The identification of these localised *scriptores*, however, remains problematic; it is virtually impossible to conclude much about their status. Although they occasionally advertised themselves as responsible for some charters, they continue to be elusive, some proficient in their practice, others semi-literati. What is apparent is that it was not completely the interests of beneficiaries which determined the protocol of charters, for some local drafting traditions persisted into the thirteenth century and local *scriptores* must have been influential in that process. Perhaps some concluding remarks might now be allowed about the relationship between charters, literacy and local society. Can we take the body of charters in a local area as a text which fixes a discourse which then informs local common experience? The texts (the charters) have an illocutionary and propositional force about law and expected norms and about how social affairs should be conducted.⁷² The local *scriptor* has thus an important role in fixing that discourse in texts, although, as Ricoeur has suggested, to all intents and purposes the *scriptor* (author) is “dead” (in the sense that there is no dialogue).⁷³ In Ricoeur’s terms, then, the text informs experience and social imagination, and particularly is this so because of the ubiquity and profusion of charters in local society.

⁷¹ Examples are on my website at: <http://www.le.ac.uk/elh/pot/wsussex/wsussex.html>.

⁷² The origin of this idea is P. RICOEUR, “What is a text? Explanation and understanding”, in: P. RICOEUR, *Hermeneutics and the Human Sciences*, ed. and tr. J.B. THOMPSON (Cambridge, 1981), pp. 145-164; I am grateful to Stephen Kelly and Paul Hyams for discussion about Ricoeur.

⁷³ *Ibid.*, pp. 146-147.

The Development of Charters Confirming Exchange by the Royal Administration (Eighth-Tenth Centuries)

PHILIPPE DEPREUX

The exchange of possessions was an important part of economic and social life during the Early Middle Ages.¹ We find evidence of this in a forgery from the beginning of the eleventh century which records the foundation of the parish of Huise as the result of an exchange between the abbey of Corbie and the Bishop of Tournai and confirmed by Louis the Stammerer.² It is not our intention to treat exchange in the Early Middle Ages exhaustively here, nor to examine certain related problems, for example the distinction between a gift and an exchange—such a distinction is sometimes very subtle³ because an exchange could lead to a gift.⁴ Nor will we consider the

¹ I would like to thank Régine Le Jan, Stéphane Lebecq and Bruno Judic for having drawn my attention to certain questions and for having spurred me to carry out this study.

² *Recueil des actes de Louis II le Bègue, Louis III et Carloman II (877-884)*, ed. F. GRAT, J. DE FONT-RÉAULX, G. TESSIER and R.-H. BAUTIER (Paris, 1978), No. 94, pp. 237-239. On this forgery, see L. MORELLE, "Formation et développement d'une juridiction ecclésiastique d'abbaye: les paroisses exemptes de Saint-Pierre de Corbie (XI^e-XII^e siècles)", in: *L'encadrement religieux des fidèles au Moyen-Age et jusqu'au Concile de Trente, 109^e Congrès national des Sociétés savantes, Dijon 1984, Histoire médiévale et Philologie 1* (Paris, 1985), pp. 597-620, esp. pp. 605 ff.

³ The "*predium nobis ab Everharto traditum*" offered by Otto I to Saint Maurice of Magdeburg, 5 Dec. 941 (*MGH D O 1*, No. 43, p. 129) becomes the "*predium omne quod ab Eberhardo quondam vasallo concambii iure obtinuimus*" in a charter of 12 Feb. 945 (*ibid.*, No. 63, p. 144). Since Eberhard had died in the meantime, we might wonder if the second charter was not effected to ward off any claim by the heirs of the king's vassal.

⁴ This is eloquently proven by two charters of Otto I. On 27 Mar. 948, the king effected an ex-

difference between an exchange and a *precaria*.⁵ This study will concentrate primarily on the confirmation of exchanges by the king which generally, but not systematically, was the reason for drawing up a charter.⁶ We see the confirmation of exchanges by royal authority used more frequently starting with the reign of Louis the Pious. This has to do with the evolution of capitulary law, whose objective was to guarantee the validity and equity of transactions. Confirmations by the king allowed him to exercise direct control over exchanges of property and right to property which he only rarely renounced. The frequency of these confirmations led to the development of a particularly stable formula; although at the same time, the formulaic character is an obstacle to a precise understanding of each of these transactions. Exchange was a custom which a law of the eighth century compared to a sale.⁷ In fact, an exchange is a defini-

change of property in Magdeburg with the Abbot of Hersfeld (*MGH D O I*, No. 96, p. 179). Three days later, he gave to Saint Maurice the property received from the Abbot of Hersfeld (*ibid.*, No. 97, pp. 179 ff.). See also the commentary of H. WEIRICH, *Urkundenbuch der Reichsabtei Hersfeld I* (Marburg, 1936), No. 48, pp. 87-88, and No. 49, pp. 89-92. The outcome of the Magdeburg exchange suggests that the monks who received this property for their subsistence were allowed their say during the negotiations with the abbot of Hersfeld.

⁵ In the Acts of the Council of Meaux-Paris (845-846), we find a record in one canon of exchanges and *precariae* made by the administrator of the episcopal property during a period of an episcopal vacancy (*Die Konzilien der karolingischen Teilreiche (843-859)*, ed. W. HARTMANN (Hannover, 1984; *MGH Conc.* III), c. 21, p. 95: "*Ut precariae et commutationes tempore viduatarum ecclesiarum factae ab his, qui loca episcoporum occupaverant, rescindantur et cum auctoritate ecclesiastica vel civili, si fiendae sunt, fiant*"). Several charters confirming *precaria* reflect a similar procedure to that of the exchange. This is particularly clear in the following charters: *MGH D LdD*, No. 151, 2 Feb. 874, pp. 213-214; *MGH D K III*, No. 143, 27 Oct. 886, pp. 229-230; *MGH D LK*, No. 40, 29 Apr. 905, pp. 158-160. More specifically in this last charter it is a matter of a gift in return for the lifetime usufruct of another property—a most unusual case: both of the originals, one for each party, have been preserved.

⁶ We must also note the curious charter studied in *BM*² under No. 724 (700). This is an exchange charter concluded on 2 Sept. 820 at Quierzy-sur-Oise between Count Hugh of Tours and the Bishop of Worms, acting as Abbot of Wissembourg, see *Traditiones Wizenburgenses: Die Urkunden des Klosters Weissenburg, 661-864*, ed. K. GLÖCKNER and A. DOLL, (Darmstadt, 1979), No. 69, pp. 268 ff. The agreement was ratified by a number of Louis the Pious' chief noblemen who had assembled for a judiciary session; see Ph. DEPREUX, "Lieux de rencontre, temps de négociation: Quelques observations sur les plaids généraux sous le règne de Louis le Pieux", in: *La royauté et les élites dans l'Europe carolingienne (du début du IX^e siècle aux environs de 920)*, ed. R. LE JAN (Villeneuve d'Ascq, 1998), pp. 213-231, esp. pp. 218-220.

⁷ *Lex Baiuvariorum*, ed. E. VON SCHWIND (Hannover, 1926; *MGH LL* sectio I, *Leg. nat. germ.* 5.2), title 16 (*De venditionibus*), 8 (p. 436): "*De commutatione. Commutatio, hoc est quod cambias, talem qualem emtio habeat firmitatem*". In the *Lex Salica*, ed. K.A. ECKHARDT, (Hannover, 1969; *MGH LL*, sectio I, *Leg. nat. germ.* 4.2), the possibility of exchanging possessions is mentioned, but the reference is elusive; there is no definition of this juridical act.

tive transfer of property.⁸ The right to exchange issues from the property, as we see from the formula of deeds of sales⁹ or deeds of gift from Anjou¹⁰ dating from the end of the sixth century. The freedom to dispose of one's property, which distinguished a freeman from a slave,¹¹ was guaranteed by Roman law, by custom and by royal authority.¹² Charters of exchange were supposed to be written down in two concordant copies. We find mention of this practice in model charters¹³ (at the end of the ninth century the author of the collection of St. Gall¹⁴ offers advice on the composition of such documents¹⁵) and in the confirmation documents themselves, where it is often stated that the petitioner(s) retained *commutationes* corroborated by the hand of *boni homines*.¹⁶ These charters were intended to grant the parties full use of the properties that were exchanged, to allow the parties to do with them as they wished¹⁷ and to guard them against external claims.¹⁸ The drawing up of a "*carta concambii*"

⁸ Some donors wanted their goods to become property in mortmain and to remain the property of a given saint in perpetuity; they were opposed to a possible transfer of their gift by the institution at a later date. There are hundreds of examples (see e.g., *UB St. Gallen* 1, No. 52, 15 Mar. 769, p. 52). Conversely, in other charters, it is specified that the donated gift may be transferred (see e.g., *ibid.*, No. 62, 12 Aug. 771 (774) pp. 62-63).

⁹ *Formulae Andecavenses*, No. 9, ed. in: *MGH Form.*, p. 7. This document is dated *ca.* 579 by W. BERGMANN, "Verlorene Urkunden des Merowingerreichs nach den *Formulae Andecavenses*", *Francia* 9 (1981) pp. 3-56, at p. 26 (No. 11).

¹⁰ *Formulae Andecavenses*, No. 37, p. 16. This document has been dated approximately 579 by BERGMANN, "Verlorene Urkunden", p. 42 (No. 46).

¹¹ This is what we find in a release charter: *Formulae Arvernenses*, No. 3, ed. in: *MGH Form.*, p. 30.

¹² *Formulae Andecavenses*, No. 58, p. 24: "*Lex Romana et docet, consuetudo pacem consentit, et regalis potestis non prohibet, ut unusquis de rem suam, quem in presente diae possedit, faciat quod voluerit*". This charter has been dated *post* 597/598 by BERGMANN, "Verlorene Urkunden", p. 54 (No. 68).

¹³ *Formulae Andecavenses*, No. 8, p. 7. This act has been dated approximately 579 by BERGMANN, "Verlorene Urkunden", p. 25 (No. 10). See also *Marculfi Formularum Liber II*, Nos. 23-24, ed. in: *MGH Form.*, pp. 91-92; *Formulae Turonenses*, No. 26, ed. in: *MGH Form.*, pp. 149-150.

¹⁴ See W. VON DEN STEINEN, "Notkers des Dichters Formelbuch", *Zeitschrift für Schweizerische Geschichte* 25 (1945), pp. 449-490.

¹⁵ *Collectio Sangallensis Salomonis III. tempore conscripta*, No. 11, ed. in: *MGH Form.*, p. 404.

¹⁶ *Formulae imperiales*, No. 3, ed. in: *MGH Form.*, p. 289.

¹⁷ *Formulae Salicae Lindenbrogianae*, No. 5, ed. in: *MGH Form.*, p. 270.

¹⁸ *Formulae Sangallenses Miscellaneae*, No. 4, ed. in: *MGH Form.*, p. 381; No. 11, *ibid.*, p. 385; No. 20, *ibid.*, p. 388.

was supposed to prevent any modification to the exchange;¹⁹ drawing up the charter constituted a confirmation in itself.²⁰

The Frequency of Exchanges With and By the King

Needless to say, the king had the right to exchange his property (the formulary of Marculf includes the model of a “*commutatio cum rege*”;²¹ we find a similar document among the *Formulae imperiales*, which date from the reign of Louis the Pious).²² Charters of exchange concluded with the king are extremely rare until the end of the reign of Louis the Pious. After that point they become more frequent in eastern Francia, which may be explained by the end of the conquests (and thus fewer opportunities for taking booty),²³ although this explanation does not explain why the King of western Francia did not make use of it. The wealth of the king was no doubt a factor here. We are concerned in this study primarily with the confirmation of land exchanges. Confirmation of exchanges of “serfs” (*mancipia*) are quite rare; the charters still extant concern primarily Saint Denis.²⁴ One of these, a charter of Louis the German, is particularly interesting, in that it indicates what could be called the market value of a literate cleric; Louis the German offered the Bishop of Regensburg a serf cleric and property in exchange for a literate cleric who was particularly gifted and who was to be set free.²⁵ It was possible to confirm the possession of property acquired by means of exchange in *pancartae* in which the origin or conditions

¹⁹ *Formulae Argentinenses*, No. 3, ed. in: *MGH Form.*, p. 338.

²⁰ *Formulae Augienses, Collectio B*, No. 38, ed. in: *MGH Form.*, p. 361: “*Sic et inter nos conplacuit atque convenit, ut aliquid de rebus nostris in concambio confirmare debuerimus*”. We also note this in other documents; see e.g., *Formulae Turonenses*, No. 14, p. 142: “*... mihi placuit, ut aliquid de rebus meis per hunc titulum libelli dotis ante dies nuptiarum tibi confirmare deberem*”. On the confirmation of transactions by putting them into writing, and on the prevention of disputes, see J. GOODY, *The Logic of Writing and the Organization of Society* (Cambridge, 1986).

²¹ *Marculfi Formularum Liber I*, No. 30, p. 61. See also *MGH D Mer.*, No. 67, pp. 59-60, and a charter of the mayor of the palace, Pippin II, *ibid.*, No. 3, pp. 92-93.

²² *Formulae imperiales*, No. 36, p. 314. See also *BM² 656* (642).

²³ See T. REUTER, “Plunder and tribute in the Carolingian Empire”, *Transactions of the Royal Historical Society*, 5th series 35 (1985) pp. 75-94.

²⁴ The text of three charters of Louis the Pious for Saint Denis have been preserved: *BM² 691* (670), 1 May 819, *BM² 791* (766), 20 Sept. 824, *BM² 804* (780), 823-825, and the text of four charters of Charles the Bald (three of which were for Saint Denis): *Actes de Charles le Chauve* I, No. 82, 840-845, pp. 229-230; I, No. 175, 23 Aug. 855, pp. 461-462; 2, No. 232, 2 Aug. 861, pp. 15-16; 2, No. 264, 15 Mar. 864, pp. 95-97. The most common ratio was one *mancipium* of an ecclesiastic lord for three *mancipia* of a lay lord.

²⁵ *MGH D LdD*, No. 152, no date, pp. 214-215.

of acquisition were stated.²⁶ We are concerned here, however, with charters drawn up especially to confirm an exchange. In most cases we can only approach this subject, as is true for so many other subjects in the history of the Early Middle Ages, on the basis of fragmentary evidence. Thus, we should note that fortune has smiled on us by preserving an exchange concluded between the Archbishop of Magdeburg and the Abbot of Fulda in the presence of Otto I, because both originals (intended for the two parties) of the confirmation of Otto II are still extant.²⁷

The confirmation of exchanges by the king was apparently a rare occurrence before the ninth century. After that point, it became much more common; we have more than 100 exchange confirmations from the ninth and tenth centuries, 30 of which were made by Louis the Pious, and about as many by his sons. Before the reign of Louis the Pious, apart from two Merovingian charters from the end of the seventh century,²⁸ we have four confirmations by Charlemagne, three of which date from before his coronation as emperor.²⁹ These three charters are all constructed in the same way. In all of them, the preamble states that if the king confirms what the ecclesiastics exchanged for their advantage, he exercises a royal custom and believes that his confirmation will make the exchange more binding.³⁰ The procedure is similar each time: the two parties inform the king that they effected an exchange for their advantage. They produce the charters of exchange confirmed by the *boni homines*. The charter then states the terms of the exchange; the two parties request confirmation from the king who grants it to them and allows them to do as they wish with the exchanged properties. The fourth confirmation charter of Charlemagne which has

²⁶ See *MGH D Lot I*, No. 38, 6 May 839, pp. 117-119; *Actes de Charles le Chauve* 2, No. 340, 28 June 870, pp. 257-260.

²⁷ *MGH D O II*, Nos. 64a and No. 64b, 22 Oct. 973, pp. 74-77. These charters illustrate the delay that an exchange confirmation could cause.

²⁸ These are a charter of Chlothar III and a charter of Clovis III. The charter of Chlothar III, dated 1 Feb. 662 (*MGH D Mer.*, No. 39, pp. 35-36), is a forgery in the opinion of Th. KÖLZER, *Merowingerstudien I* (Hannover, 1998), pp. 111-117. On the other hand, the charter of Clovis III, of 25 June 692 (*MGH D Mer.*, No. 62, pp. 55-56), is authentic in the opinion of KÖLZER, *Merowingerstudien I*, pp. 70-75. We have not taken into consideration here the judgement of Childebert III of 14 Mar. 697 (*MGH D Mer.*, No. 70, pp. 62-63).

²⁹ *MGH D KdGr*, No. 79, 19 Feb. 774, pp. 113-114; No. 136, Oct. 781, pp. 186-187; No. 161, 11 July 788, pp. 218-219.

³⁰ F. HAUSMANN and A. GAWLIK, *Arengenverzeichnis zu den Königs- und Kaiserurkunden von den Merowingern bis Heinrich VI.* (Munich, 1987: *MGH Hilfsmittel* 9), No. 2894, p. 484: "*Si hoc, quod rectores ecclesiae pro opportunitate venerabilium locorum inter se commutant (commutaverint), nostris oraculis confirmamus, regiam consuetudinem exercemus et id in postmodum iure firmissimo mansurum esse credimus*".

been preserved dates from 7 August 807 and is a bit different.³¹ The formula of the preamble is modified but not its essence.³² It is stated, moreover, that the king grants the confirmation of exchange in view of the charters that have been submitted. This formulary served as model for the charters of Louis the Pious.

Conditions Governing the Validity of the Exchange

The limited number of charters confirming exchanges before the reign of Louis the Pious is probably not due solely to the loss of documents through the centuries, but indicates an evolution in capitulary law. It was perhaps in fact only the legal sanction of a new practice, or at least the expression of a new need, the need for confirmation of an exchange. It was not until the reign of Louis the Pious that the importance, or necessity, of confirmation by royal authority was underlined. The rules that had to be respected to effect an exchange seemed to have been of little interest to Charlemagne. In his capitularies, the possibility of making an exchange is mentioned almost as an aside.³³ In contrast, Louis the Pious defended the right of royal control, mainly out of concern of defending ecclesiastical property and guaranteeing gifts in mortmain.³⁴ In the capitulary of *missi* given at Worms in August 829, the emperor

³¹ MGH *D KdGr*, No. 206, pp. 275-276.

³² HAUSMANN and GAWLIK, *Arengenverzeichnis*, No. 2696, pp. 453-454: "*Si enim ea, quae fideles regni (imperii) nostri pro eorum oportunitatibus inter se commutaverint vel concamiaverint, nostris confirmamus aedictis, regiam (regalem, imperialem) exercemus consuetudinem et hoc in postmodum iure firmissimo mansurum esse credimus (decernimus, volumus)*".

³³ *Capitula excerpta canonica* (not datable), ed. in: MGH *Cap.* 1, No. 113, c. 3, p. 231; *Capitulare Italicum* (801), ed. in: MGH *Cap.* 1, No. 98, c. 1, p. 205.

³⁴ *Capitula Francica* (no date), ed. in: MGH *Cap.* 1, No. 167, c. 5, p. 334: "*Si aecclesiae aliquid sui iuris defraudatum fuerit a pravis procuratoribus aut prece aut pretio aut privata gratia praecessorum, successoribus omni tempore liceat inferre calumniam: quia nullo tempore ecclesia debet suum ius amittere praeter mobilem possessionem, ut est aurum, argentum, vestes aut pecora aut domus. Praedia vero, terras, villas, ecclesias census, quia inde magni redditus possunt exire in commune bonum, nulla commutatione, nullo pacto liceat ad proprietatem alicuius transferre. Quod postquam compertum fuerit, rescindatur*"; *Capitulare missorum* (819), ed. in: MGH *Cap.* 1, No. 141, c. 7, p. 289: "*De locis dandis ad claustra canonicorum facienda, si de eiusdem ecclesiae rebus fuerit, reddatur ibi; si de alterius ecclesiae vel liberorum hominum, commutetur; si autem de fisco nostro fuerit, nostra liberalitate concedatur*". This article was adopted by the collection of capitularies of Ansegisus (*Lib. IV*, c. 48, ed. in: MGH *Cap.* 1, p. 443). It was also taken up by the Fathers of the Council of Meaux-Paris (June 845-Feb. 846), c. 53, ed. in: *Die Konzilien der karolingischen Teilreiche (843-859)* (= MGH *Conc.* III), pp. 109-110: "... *si autem de alia casa dei aut de cuiuslibet proprio fuerit, ex convenientia commutandi licentia tribuatur*". On mainmort in the Merovingian period, cf.: E. MAGNOU-NORTIER, "Les évêques et la paix dans l'espace franc (VI^e-XI^e siècles)", in: *L'évêque dans l'histoire de l'église: Actes de la septième ren-*

commands that the *commutationes* which were “*inutiles et incommodae atque inrationabiles*” be annulled, and he reserved for himself the right to know of cases involving mortmain.³⁵ This measure had serious consequences, because from then on no one was protected from the annulment of property transactions except by asking the decision of the king. This is how the dispensation of authorization to make an exchange came into being when (aside from public property) the exchange involved ecclesiastical property; this is also the source for requesting confirmation of the exchange. As a consequence, the right to proceed freely to an exchange became a privilege which was seemingly granted to few institutions. To my knowledge, the first request for authorization was granted to the abbey of Aniane by Louis the Pious; on 22 February 815 the emperor confirmed earlier exchanges between Benedict of Aniane, and authorized the abbots to effectuate new exchanges.³⁶ Louis only gave this privilege to abbots with clear prestige: his advisor Benedict³⁷ and Adalhard of Corbie³⁸ for example. On 27 July 823 permission to carry out exchanges was also granted to the abbots of Corvey.³⁹ This charter served as the model for that of Louis the German dated 10 December 840 for the same institution.⁴⁰ Towards the middle of the ninth century, Louis the German gave permission to the abbots of Lorsch and Altaich, as well as to the archbishops of Salzburg and the bishops of Passau to carry out any exchange they deemed appropriate.⁴¹ In the case of Lorsch, this authorization extended to the value of three *mansi* at most; if the exchange involved larger properties it required the approval of the king. Theodor Sickel saw a restriction in this placed not on the abbot but on nobles making property

contre d'histoire religieuse tenue à Fontevraud les 14 et 15 octobre 1983 (Angers, 1984), pp. 33-50, at pp. 35 ff.

³⁵ *Capitulare missorum Wormatiense* (Aug. 829), ed. in: *MGH Cap.* 2, c. 5, p. 15: “*Ubi cumque commutationes tam tempore nostro quamque genitoris nostri legitima et rationabiles atque utiles ecclesiis Dei factae sunt, permaneant; ubi cumque vero inutiles et incommodae atque inrationabiles factae sunt, dissolvantur, et recipiat unusquisque, quod dedit. Ubi vero mortua manus interiacet aut alia quaelibet causa, quae rationabilis esse videtur, inventa fuerit, diligenter describatur et ad nostram notitiam perferatur*”—a chapter repeated by Charles the Bald in the *Capitulare Carisiacense* of 4 Jan. 873, ed. in: *MGH Cap.* 2, c. 8, p. 346; Council of Meaux-Paris (June 845-Feb. 846), c. 23, pp. 96-97.

³⁶ *BM*² 574 (554).

³⁷ See Ph. DEPREUX, *Prosopographie de l'entourage de Louis le Pieux (781-840)* (Sigmaringen, 1997), pp. 123-129.

³⁸ See B. KASTEN, *Adalhard von Corbie: Die Biographie eines karolingischen Politikers und Kloostervorstehers* (Düsseldorf, 1986); see also DEPREUX, *Prosopographie*, pp. 76-79.

³⁹ *BM*² 780 (755).

⁴⁰ *MGH D LdD*, No. 27, p. 33.

⁴¹ *MGH D LdK*, No. 47 (11 Jan. 848), No. 59 (22 Mar. 851), No. 60 (15 Nov. 851) and No. 62 (16 Jan. 852), respectively.

transactions.⁴² In reality, Louis the German introduced the clause “that this exchange should be equal, just and reasonable”,⁴³ that is to say that it respected the principle of equity referred to in charters of exchange since the Merovingian period.

The evolution of legislation and legal practice under Louis the Pious was confirmed during the reign of Charles the Bald. Beginning with him, it was expressly forbidden to exchange an ecclesiastical property without approval from the king.⁴⁴ This insistence on the approval of the king appears to be an evolution of the second quarter of the ninth century, but it should be stressed that the contemporaries of Charles the Bald were not aware of this—unless we have to take into consideration lost documents—because we find in a capitulary of February 865 that the *missi* were intended to investigate illegal exchanges made with ecclesiastical institutions “without royal authorization” and to annul them “as found in the capitularies of our grandfather and our father”.⁴⁵ Charles the Bald quite often notes exchanges in his capitulary legislation⁴⁶—which makes him something of an exception in this regard.⁴⁷ His interest is reflected in actual practice (20 confirmations of exchange made by the king have been preserved); but after his reign the practice of the king’s confirming exchanges tended to disappear in western Francia.

⁴² Th. VON SICKEL, “Beiträge zur Diplomatik I”, *Sitzungsberichte der Philosophisch-Historischen Classe der kaiserlichen Akademie der Wissenschaften* 39 (Vienna, 1861), p. 362.

⁴³ MGH *D LdD*, No. 47, p. 63: “*ut equaliter et iuste et rationabiliter commutatio illa fiat*”.

⁴⁴ *Conventus Suessionensis* (22 Apr. 853), ed. in: MGH *Cap.* 2, No. 258, c. 12, p. 266: “*Postremo quod a quibusdam conservabatur, praefixum est generaliter ab omnibus custodiendum, ne ullae res ecclesiasticae absque regis cohibentia commutentur*”; *Capitulare missorum Suessionense* (Apr. 853), ed. in: MGH *Cap.* 2, No. 259, c. 12, p. 270: “*Ut missi nostri omnibus per illorum missaticum denuntient, ne commutationes rerum vel mancipiorum quilibet praelatus earundem rerum ecclesiasticarum sine licentia vel consensu nostro facere praesumat, neque mancipia ecclesiastica quisquam nisi ad libertatem commutet, videlicet ut mancipia, quae pro ecclesiastico dabuntur, in ecclesiae servitute permaneant, et ecclesiasticus homo, qui commutatus fuerit, perpetua libertate fruatur*”.

⁴⁵ *Capitulare Tusiense in Burgundiam directum* (Feb. 865), ed. in: MGH *Cap.* 2, No. 274, c. 6, p. 330: “*Ut de iniustis commutationibus, quae ad casas Dei factae sunt sine regia auctoritate, missi nostri inquirant et eas dissolvant, sicut in capitularibus avi et patris nostri continetur. Et si mortua manus vel praeceptum regium super eas interiacet, describantur diligenter atque fideliter, qualiter factae sunt, et nobis missi nostri renuntient; et signatis ipsis praeceptis, sicut lex Romana praecepit, ad nostram praesentiam deferri faciant, sicut in capitularibus progenitorum nostrorum continetur*”.

⁴⁶ See also the Council of Meaux-Paris (June 845-Feb. 846), c. 21, p. 95; *Capitulare Carisiacense* (4 Jan. 873), c. 8, p. 346.

⁴⁷ The only other reference to exchanges is found in a capitulary of Guido of Spoleto: *Widonis imperatoris capitulare Papiense legibus addendum* (May 891), ed. in: MGH *Cap.* 2 No. 224, c. 8, p. 109.

The charters recurrently mention the advantage the parties gained in the exchange.⁴⁸ This is particularly clear in the preamble of the model of *concamio de villas* copied in the *Formulary* of Marculf which refers to the “favourable *beneficia*” for both parties.⁴⁹ Such a reciprocal advantage was an essential condition for the validity of the exchange, moreover, as is proven by the capitulary legislation of Louis the Pious which only allowed *commutationes* that were “legitimate, reasonable and useful”.⁵⁰ Above all, as is expressly stated in numerous charters, the two parties “... approached our clemency and made known to our highness that they had exchanged some properties between them to the advantage of both parties”.⁵¹ Sometimes it is possible for us to understand the advantage of an exchange from the document itself. The property could be to complete a domain, for example. This was the case in an exchange between the Bishop of Freising, Atto and the noble, Rifuin on 24 May 811, which was confirmed by Louis the Pious five years later:⁵²

Lord Atto had among his property of Saint Mary two sections of the Ötting *villa*⁵³ on the Sempt River in Westergau, and Rifuin had the third part of the property which was in his possession through a joint gift from his family, and he was interested in another property called Burgrain⁵⁴ close to the monastery known as Isen which belonged to the same bishopric.⁵⁵

Rifuin offered his property in exchange for a property “of equal significance and value” in Buch am Buchrain.⁵⁶ This was a property given to Freising by the nobleman Cotehelm a generation earlier.⁵⁷ If we believe a model charter from the collection of St. Gall, the primary reason for an exchange was to cre-

⁴⁸ See *Formulae Alsaticae: Formulae Argentinenses*, No. 3 (*carta concambii*), p. 338 (“*pro ambarum partium oportunitate*”). The many, mostly unknown parameters (the size of the lot, the yield of the land, the prestige that might have been attached to it, etc.) make it very difficult, if not impossible, to establish a comparison of two properties.

⁴⁹ *Marculfi formularum liber II*, No. 23, p. 91; see also the model of *commutatio* (No. 26, pp. 149 ff.). In document No. 24 (*concamio de terra aut vinea*), it is said that a property was given “*in compenso*” (p. 92). See also *Cartae Senonicae*, No. 5, p. 187.

⁵⁰ “*legitimae et rationabiles atque utiles ...*” see *supra*, note 35.

⁵¹ This quotation is after *Formulae imperiales*, No. 3, p. 289: “*ad nostram accedentes clementiam innotuerunt celsitudini nostre, eo quod pro ambarum parcium oportunitate aliquas res inter se commutassent*”.

⁵² *BM²* 625 (605), 23 Aug. 816.

⁵³ Kirchötting and Breitötting, about 20 km south-east of Freising.

⁵⁴ About 30 km south-east of Freising.

⁵⁵ *Tr. Freising* 1, No. 298, p. 257.

⁵⁶ About halfway between Ötting and Burgrain.

⁵⁷ *Tr. Freising* 1, No. 298, p. 258. This property became part of the holdings of Freising around 776/777 (see *ibid.*, No. 79, pp. 102 ff.); Cotehelm had been given a church and some land.

ate an integrated property entity.⁵⁸ Transactions could also serve to create a new territorial policy, as is clear in the case of the exchange between the Bishop of Freising, Waldo and his vassal Jacob. This exchange was confirmed on 21 August 893 by King Arnulf;⁵⁹ the bishop gave up half of the church of Inzemoos,⁶⁰ a *curtis* and a dependency of it in exchange for Mintraching and Figlsdorf.⁶¹ Thus, the bishop was continuing an acquisition policy for Figlsdorf which seems to have started about the middle of the century.⁶² He gave up a property that was more distant and which had been part of the holdings of Freising for a longer period.⁶³ It was not just a matter of economic interest; the control of the population was also a consideration, as we may infer from the exchange of the church of Vilsingen⁶⁴ and its landed property in exchange for arable fields in the same area concluded by the Abbot of St. Gall, Hartmut, and Count Adalbert and confirmed by Louis the German.⁶⁵ Another exchange involving the same people and confirmed the same day is even more interesting:⁶⁶ we clearly see that the property given up by the Abbot at Weisslingen⁶⁷ had been part of the abbey's holdings for a long time,⁶⁸ whereas the property received at Turbenthal⁶⁹ completed acquisitions which had been begun in the second quarter of the ninth century and continued to the period of the ex-

⁵⁸ *Collectio Sangallensis Salomonis III. tempore conscripta*, No. 11, p. 404: "... providens paupertati meae, ut res meas aliquatenus in unum colligerem nec penuria deficerem ...".

⁵⁹ *MGH D Arn.*, No. 118, pp. 173 ff.

⁶⁰ Groß- and Kleininzemoos, about 25 km west-south-west of Freising, 7 km north of Dachau.

⁶¹ Mintraching is located 10 km south-south-west of Freising; Figlsdorf is located 13 km north-north-east of Freising.

⁶² The first gift to Freising of property located in Figlsdorf seems to have been made in 850 (*Tr. Freising*, No. 722a, p. 602). In 857-864, Freising made an acquisition by means of an exchange (*ibid.*, No. 807, p. 653). In 926-937, an exchange was made with the vassal Jacob (*Tr. Freising*, No. 1074, pp. 20-21). Was this the same individual as the one in 893? It is not very likely; it was more probably a relative (his son?).

⁶³ In 779, Freising was given a small chapel (*Tr. Freising*, No. 97b, p. 115). In 816 and 821, the usufruct was confirmed to the son of the donor (*ibid.*, No. 357, p. 305; No. 441, p. 379). In 848, Freising received a new gift (*ibid.*, No. 697a, pp. 583-584) and effected an exchange in 887-895 (*ibid.*, No. 984, pp. 746-747).

⁶⁴ 6 km south-west of Sigmaringen. The abbey of St. Gall had had possessions there since the end of the eighth century (see *UB St. Gallen* 1, No. 135, 27 Mar. 793, pp. 126-127; No. 230, p. 223 (a gift of 817)).

⁶⁵ *MGH D LdD*, No. 159, charter of 3 Apr. 875, pp. 222-223.

⁶⁶ *MGH D LdD*, No. 160, pp. 223-224.

⁶⁷ 8 km south of Winterthur and 6 km west of Turbenthal.

⁶⁸ *UB St. Gallen* 1, No. 12, 10 Sept. 745, pp. 14-15; No. 44, 22 Dec. 764, pp. 45-46; No. 188, 23 Mar. 806, p. 178.

⁶⁹ About 12 km south-east of Winterthur.

change.⁷⁰ This place seems to have become a centre of management for the abbey because it was here that charters were drawn up from then on.⁷¹

Evidently it was necessary for an exchange to be advantageous to both parties for it to remain valid. How many exchanges were reversed? We will never be able to answer this question, but it is likely that a study of the documentation will yield a few new insights. This is the case, for example, in an exchange between Solomon, Abbot of St. Gall, and the king's *fidelis*, Meginwart, which Louis the Child granted. The king repeated his action twice, first in 902 and then in 905.⁷² The two charters are similar, with the exception that the abbot's share was increased in the second charter. Perhaps this was a way of eliminating a disagreement between the abbot and the king's *fidelis*, if St. Gall was not able to profit sufficiently from the exchange—but this is just a hypothesis.

The Role of the Document in the Legal Process of Exchange and Confirmation

Although it was the desire of the emperor to have charters drawn up, even for an exchange with his *fiscus* which he had authorised,⁷³ permission to make an exchange granted by the king was supposed to give the transaction an immutable character. That is clear from a charter found among the *Formulae imperiales* (no. 54). This is an unusual document in that it contains two unique elements: the preamble⁷⁴ and the passage in which it is said that no one may challenge the exchange because it had the prior permission of the emperor.⁷⁵ Al-

⁷⁰ *UB St. Gallen* 1, No. 288, 15 Jan. 825, p. 269; No. 326, 18 Aug. 829, pp. 300-301; No. 360, 25 May 837, p. 335; 2, No. 388, 843-864, p. 9; No. 461, 27 Mar. 858, p. 78; No. 546, 3-4 June 869/870, pp. 160-161.

⁷¹ *UB St. Gallen* 2, No. 547, 10 July 869, pp. 161-162; No. 606, 13 Apr. 878, p. 217; No. 634, 2 Mar. 884, p. 241. On the places where the charters of Sankt Gallen were written, see R. MCKITTERICK, *The Carolingians and the Written Word* (Cambridge, 1989), pp. 104-115.

⁷² *MGH D LK*, No. 14, 6 Aug. 902, pp. 116-117; No. 37, 21 Jan. 905, pp. 153-154.

⁷³ *Formulae imperiales*, No. 36, p. 314.

⁷⁴ HAUSMANN and GAWLIK, *Arengenverzeichnis*, No. 1211, p. 208: "*Inter omnes, qui divini vel humani iuris scientiam adsecuti sunt, constat non solum immutari non debere, verum etiam summa firmitate subnixum manere, quidquid bona fide contractum est; propterea debet interdum confirmari, quod inter partes pro ambarum utilitate commutatum est*".

⁷⁵ *Formulae imperiales*, No. 54, p. 326: "*Et quia haec commutatio permissione atque licentia domni et gloriosissimi imperatoris facta est, nullo unquam tempore a qualibet parte vel persona dissolvi vel convelli aut in alium statum valeat immutari; sed praesens commutatio tam rationabiliter facta et testium legitimorum manibus atque signaculis roborata perpetuam obtineat firmitatem*".

though the preamble alludes to the necessity of confirming exchanges deemed profitable for both parties, the marginal character of the formulary, in a period when charters confirming exchange were particularly rigid, leads me to believe that this formula reflects the model of a private charter. So does the absence of any reference to a request for issuing a charter of confirmation and the reference to the signature of witnesses.⁷⁶ A charter of Charles the Bald confirming an exchange between himself and the abbey of Saint-André-le-Haut shows that an exchange with the *fiscus* could be settled in two phases: the drawing up of a written document (perhaps by order of the *actor* of the *fiscus*) and the confirmation of the exchange, the conditions of which are known by those charters which were made previously (“*sicut in commutationibus ex hoc factis continetur*”).⁷⁷ However, sometimes the charter seems to be the only written document regarding the matter.⁷⁸ An exchange with the king, and a subsequent establishment of a charter did not release the other party from drawing up a document himself, as we see in the case of an exchange concluded on 18 July 845 between Louis the German and the Abbot of Fulda.⁷⁹

The request for permission to make an exchange led to an inquiry and a written report, as we find in No. 36 of the *Formulae imperiales*.⁸⁰ Whether or not this was a “copy of the precept concerning the ecclesiastical properties exchanged with the emperor ...”⁸¹ does not make a great deal of difference. A charter of Louis the German dated 29 April 858 for the Bishop of Speyer illustrates the terms of the inquiry, which considered both the nature and yield of the properties as well as the consent of interested parties (in this case, the members of the chapter).⁸² We find in the notice of an exchange concluded in 825 between the Bishop of Mâcon and Count Warin that Bishop Hildebald undertook the exchange “by order of the most serene lord emperor Louis”.⁸³ Was it really an order? Most likely we should understand by this that, even though the

tatem”.

⁷⁶ Not all the documents whose model is found among the *Formulae imperiales* are royal charters. We also find private charters (see *formulae* Nos. 33 and 35).

⁷⁷ *Actes de Charles le Chauve* 2, No. 386, pp. 365-366.

⁷⁸ This is the case for the exchange between the Abbot of Corbie and Count Maginarius, on behalf of the Emperor (*BM*² 821 (797) = *Formulae imperiales*, No. 36, p. 314).

⁷⁹ *MGH D LdD*, No. 43, pp. 57-60.

⁸⁰ For the *actor* Maginarius, who made an inquest before the exchange of property between the Abbot of Corbie, Adalhard, and the *fiscus* (as in *Formulae imperiales*, No. 36, p. 314), see DEPREUX, *Prosopographie*, p. 325, note 2.

⁸¹ *Formulae imperiales*, No. 36, p. 314: “*exemplar praecepti de rebus ecclesiasticis apud imperatorem commutatis*”.

⁸² *MGH D LdD*, No. 92, pp. 132-134.

⁸³ *Cart. Mâcon*, No. 55, p. 42: “*preceptione domni serenissimi Ludovici imperatoris*”.

confirmation charter of Louis the Pious makes no mention of it, the Bishop of Mâcon asked for prior permission of the emperor to conclude this agreement and that the reference here is to such an authorization. We have examples of exchanges concluded after the parties had asked for authorization from the emperor; there is, for example, an exchange between the Archbishop of Arles, Noto, and Count Leibulf confirmed by Louis the Pious on 3 January 825, the terms of which gave the Count full right to certain holdings "from the properties of the episcopacy" (*ex rebus episcopatus*), which he already held as a benefice. Consequently, the Count had to offer something "from the properties in his own possession" (*ex rebus proprietatus suae*) to the archbishop.⁸⁴ By chance, the exchange charter of 7 November 824 has also been preserved in the cartulary of Lérins; in it we find specified twice that the agreement took place "by permission of the lord emperor".⁸⁵ This agreement is fully justified because the exchange concerned property held as benefice,⁸⁶ but an exchange was also justified when some of the property in question belonged to the Church and consequently was held in mortmain. Thus, the Abbot of Prüm and the Archbishop of Trier could make an exchange "by permission of our authority", as we find in a charter of Emperor Lothar.⁸⁷ The king intervened on various grounds. It was certainly understandable when part of the property being exchanged concerned a benefice held from him,⁸⁸ but he would also intervene when one of the parties involved was a direct vassal of his. We find the sovereign acting as mediator in a charter of King Henry the Fowler. Otgar, who is said to be his "*fidelis et familiaris*", gave him "a villa of his property" so that the king would yield to him in return the property that he wished to exchange with the Abbot of Fulda.⁸⁹ A clear explanation of having recourse to the king is

⁸⁴ *BM*² 794 (769).

⁸⁵ *Cartulaire de l'abbaye de Lérins*, ed. H. MORIS and E. BLANC, First part (Paris, 1883), No. 247, pp. 255-258: "*per licentiam domni imperatoris*".

⁸⁶ For another example, see Ph. DEPREUX, "Die Kanzlei und das Urkundenwesen Kaiser Ludwigs des Frommen—nach wie vor ein Desiderat der Forschung", *Francia* 20.1 (1993), pp. 147-162, at p. 160, note 142.

⁸⁷ *MGH D Lot I*, No. 87, pp. 211-212: "*per licentiam nostrae auctoritatis*" (this charter dates from 1 Jan. 845).

⁸⁸ This is the case of *BM*² 987 (956), a charter by which Louis the Pious confirmed an exchange that he had authorized between the Abbot of Fulda and a vassal of the Emperor; see *Codex diplomaticus Fuldensis*, ed. E. DRONKE (Kassel, 1850), No. 523, 17 Feb. 839, pp. 230-231. It is true that the exchange concerned the vassal's *beneficium*, both what he gave up and what he received, which was granted by the *jus* of the emperor. Hrabanus Maurus had asked permission of Louis the Pious, and it was only after the review and written report ("*et inbreviatam ad nos-tram deferret noticiam*") of another vassal that the emperor allowed the agreement to be concluded. See also *BM*² 903 (874).

⁸⁹ *MGH D H I*, No. 8, without date, p. 46.

that his intervention provided a guarantee by conferring more authority to a legal document; his intervention was also very natural given his protection.⁹⁰ Thus we also understand better why the king intervened in an apparently systematic way in the exchanges concerning ecclesiastic institutions. He did so on the grounds of his *tuitio* related to the privilege of immunity that existed since the reign of Louis the Pious.⁹¹

The Formulary of Exchange Confirmations

The formularies of Passau, which were drawn up at the time of the Bishop Hartwig (838-864), are of interest primarily because they document that royal charters could be drawn up by beneficiaries. It consists of model documents that might be of use to an ecclesiastic institution, among which we find an example of an exchange confirmation which corresponds essentially to the model defined at the time of Louis the Pious.⁹² We have had occasion to mention this emperor several times in this study. Louis the Pious played an important role not only for legal practices, but also for the drafting of documents. It was his chancery that drew up the classic model of an exchange confirmation charter, although borrowing from certain practices from the time of Charlemagne. Nonetheless, we see great regularity in the *dictamen* of the exchange confirmation charters and the notaries of Louis the Pious certainly were part of this. Similarly, we note a very interesting phenomenon in the model of the “*praeceptum super commutatione*” which was reproduced in the *Formulae imperiales*;⁹³ this is the only document in the whole collection which really seems formulaic, that is to say, it is the only model in which the various cases of individuals are declined constantly and systematically (“*ille episcopus aut abbas vel comes aut ille vel ille*”). To put it differently, it is the only example of a document which does not seem to have been copied from a particular charter but from a model, much like our pre-printed administrative forms. Of course, over time, a number of minor evolutions occurred, the growing scarcity

⁹⁰ This is particularly clear in the charters used by the emperor to put the Jews under his protection (*defensio*): among other things, it allowed them to exchange their property in their own right (see *BM*² 805 (781) and 806 (782)).

⁹¹ See J. SEMMLER, “*Iussit ... Princeps renovare ... praecepta*: Zur verfassungsrechtlichen Einordnung der Hochstifte und Abteien in die karolingische Reichskirche”, in: *Consuetudines Monasticae: Eine Festgabe für Kassius Hallinger aus Anlaß seines 70. Geburtstages*, ed. J.F. ANGERER and J. LENZENWEGER (Rome, 1982: *Studia Anselmiana* 85), pp. 97-124.

⁹² *Collectio Pataviensis*, No. 5, ed. in: *MGH Form.*, p. 459.

⁹³ *Formulae imperiales*, No. 3, p. 289.

of preambles in charters confirming exchange in eastern Francia for example.⁹⁴ But it seems to me that the general impression of uniformity of the charters of exchange confirmation makes plausible the hypothesis of a systematic use of a model. There is no place for originality in the case of charters confirming an exchange (in contrast to other matters dealing clearly with privileges); the fact that the material is not original is illustrated by the very few exchange confirmations that have a unique preamble or at least one that varies from the standard formula (about 20 charters).

This volume concerns charters, but more from the point of the view of their place in society than from that of diplomatic in its strictest sense. For that reason we have not insisted on the formulary. Still, it is important to note the significance of the formulary which points out both the significance of certain customs (the work of the scribe) and the limits of our information (which handicaps the historian in his work). The charter of Louis the Pious confirming the exchange concluded between the Bishop of Freising and the nobleman Rifuin is particularly instructive in this regard, and as it shows a loss of information between the exchange charter and the confirmation charter. In the confirmation charter it is not mentioned that the property of Rifuin completed that of Freising; it is simply stated in the normal way that the exchange took place to the advantage of both parties,⁹⁵ although this exchange would seem to have taken place primarily at the instigation of Bishop Atto. It is said that Atto made this exchange “with the consent and the will of the brothers living there and with our permission given” (*“cum consensu et voluntate fratrum ibidem degentium per nostram datam licentiam”*), whereas it is stated in the exchange charter that this exchange was concluded on condition of a confirmation of the transaction by the emperor.⁹⁶

Another file of documents is of great interest in this matter;⁹⁷ this concerns the exchange concluded in 825 between the Bishop of Mâcon and the Count of Mâcon which involved, among other properties, the *villa* of Cluny.⁹⁸ On 3 June

⁹⁴ This is not a characteristic of charters confirming exchanges; see R.-H. BAUTIER, “Les actes royaux de l’époque carolingienne”, in: *Typologie der Königsurkunden: Kolloquium de la Comission Internationale de Diplomatie in Olmütz, 30.8-3.9.1992*, ed. J. BISTRICKÝ (Olomouc, 1998), pp. 23-41, at p. 32; on the turning point of “the period of the notary Heberhard”, see: P. JOHANEK, “Die karolingischen Diplome der Francia orientalis”, *ibid.*, pp. 115-125, at pp. 120 ff.

⁹⁵ *BM*² 625 (605).

⁹⁶ *Tr. Freising* 1, No. 298, 24 May 811, p. 258: “... si domni nostri imperatoris esset voluntas hoc ex utrisque partibus ita suo confirmare praecepto. ... Et hoc concambium istis praesentibus usque ad iussionem domni nostri confirmantibus et consentientibus ita factum est ...”.

⁹⁷ I presented this case in my doctoral dissertation on *L’entourage et le gouvernement de l’empereur Louis le Pieux* ... (Paris, Université de Paris IV, 1994) 2, pp. 1360-1373.

⁹⁸ There is also a trace of a *Rescriptio Caroli regis* (Charlemagne) *de donatione villae Clunia-*

825 in Aix-la-Chapelle Louis the Pious confirmed the exchange concluded by Hildebald, Bishop of Mâcon and Count Warin.⁹⁹ The confirmation charter which has been preserved in the original,¹⁰⁰ was copied into the Cluny cartulary.¹⁰¹ We also have a brief notice and a somewhat longer document made up of two elements: the details of the exchange (the notice *De permutatione Cluniaci facta*¹⁰²) and a notice concerning the ceremony of the property transfer handed down under the title of *Investitura Cluniaci facta Warino comiti ab episcopo*. These three items have come down to us in the cartulary of Saint Vincent of Mâcon.¹⁰³

The short notice of the cartulary of Saint Vincent makes reference to a “*charta commutationis*”.¹⁰⁴ In other words, there was a charter drawn up in duplicate of which we have knowledge through the notice *De permutatione Cluniaci facta*.¹⁰⁵ Notice No. 55 of the cartulary of Saint Vincent of Mâcon (*De permutatione Cluniaci facta*) is a document that mixes an objective account about the property given by the bishop¹⁰⁶ and a subjective account about the property offered in return by the count and his wife.¹⁰⁷ The triple repetition of

censis Leduardo episcopo Matisconensi, in: *Chartes Cluny* 1, No. 1, p. 1, dating perhaps from 802; see J. de VALOIS, “Sur quelques points d’histoire relatifs à la fondation de Cluny”, in: *Millénaire de Cluny: Congrès d’histoire et d’archéologie tenu à Cluny les 10, 11, 12 Septembre 1910* (Mâcon, 1910), pp. 177-219, especially pp. 177 ff. Its existence is confirmed by a charter from the tenth century, *Cart. Mâcon*, No. 108, pp. 82-83, which dates from 972-977: “... *sicut in praecepto quod Karolus imperator fieri jussit continetur, preter illud quod in Cluniaco est*”.

⁹⁹ BM² 796 (772). This charter is only mentioned as a reminder in: *Chartes Cluny* 1, No. 5, p. 8.

¹⁰⁰ It is found in the city library at Reims. Facsimile in: *Diplomata Karolinorum: Recueil de reproductions en fac-similé des actes originaux des souverains carolingiens conservés dans les archives et bibliothèques de France*, ed. F. LOT and Ph. LAUER, 9 vols. (Toulouse and Paris, 1936-1949), 2, Pl. 39.

¹⁰¹ This is the cartulary “E”, from the end of the thirteenth century (see *Chartes Cluny*, preface, pp. XXXIV ff.), now MS Paris, BNF, lat. 5458.

¹⁰² *De permutatione Cluniaci facta cum aliis villis inter Hildebaldum episcopum Matisconensem et Warinum comitem*.

¹⁰³ *Cart. Mâcon*, No. 52, p. 40 (brief notice) and No. 55, pp. 42-44 (this number covers the two other notices). These two documents are mentioned in *Chartes Cluny* 1, No. 6, p. 9 and No. 4, p. 8, respectively.

¹⁰⁴ *Cart. Mâcon*, No. 52, p. 40.

¹⁰⁵ *Cart. Mâcon*, No. 55, p. 43. The document which was the model for the notice giving us the terms was signed by Bishop Hildebald. His signature is followed by that of eight witnesses. This charter was written by a deacon named Agebert.

¹⁰⁶ *Cart. Mâcon*, No. 55, p. 42: “*Primitus enim dat Hildebaldus episcopus ...*”; “*Dat prefatus episcopus ...*”.

¹⁰⁷ The account starts out objectively: “*Pari modo in compensatione hujus rei meriti dat Warinus comes et uxor sua Albana de rebus propriis eorum ...*”, but in the middle of the sentence, the style becomes subjective: “*omnia et ex omnibus, quantum in ipsa villa vel ibi aspicientia et pro-*

the syntactic form “*dat ... ex proprietate nostra*” concerning the property given by Warin makes it quite likely that it was the donation of the count that served as the model for the writer of the notice; this idea is reinforced by the fact that the text has been preserved in the cartulary of Saint Vincent. Consequently, the document was that which was received by the Bishop of Mâcon.

The comparison of the notice *De permutatione Cluniaci facta* and the confirmation charter of Louis the Pious allows us to make several conclusions. We remark that the appurtenances formulae in the *commutatio* and the charter have not been constructed according to the same pattern; this is true for the position in the text of the “entries and exits” (“*cum exiis et regressibus*”) and the waterways (“*cum aquis aquarum-que/ve decursibus*”) as well as for other inversions of terms. There is still much to be done in the study of the formulary of charters from the Early Middle Ages. Some groundwork has already been done, for example concerning the appurtenances formulae.¹⁰⁸ B. Schwineköper has remarked on the significance of the formulary, both in private charters¹⁰⁹ and royal diplomas,¹¹⁰ and he presumes that the same was the case for the charters of Louis the Pious.¹¹¹

The importance of formularies, as pointed out by Schwineköper, is particularly striking in the charters concerning the exchange of 825 concerning Cluny, as much for what is in the *commutatio* as in the charter of Louis the Pious, whose appurtenances formulae may be compared to those of the gifts of this emperor. We find, for example, a mention related to the “entries and exits” which is placed at the end of the formula just before the mention of waterways, if any, in contrast to the formulary of the *commutatio*. We see the same construction in a number of charters.¹¹² The term *capella* that we find on three occasions in the *commutatio* is systematically transcribed by *ecclesia*, a frequently used word in the formulary of Louis the Pious.¹¹³ Moreover it is particularly at the beginning of appurtenances formulae that the notary diverges from the text of the *commutatio* without taking into account the order in which

prietate nostra visi sumus habere totum et ad integrum”.

¹⁰⁸ See B. SCHWINEKÖPER, “*Cum aquis aquarumve decursibus*: Zu den Pertinenzformeln der Herrscherurkunden bis zur Zeit Ottos I.”, in: *Festschrift für Helmut Beumann zum 65. Geburtstag*, ed. K.-U. JÄSCHKE and R. WENSKUS (Sigmaringen, 1977), pp. 22-56.

¹⁰⁹ SCHWINEKÖPER, “*Cum aquis aquarumve decursibus*”, p. 25.

¹¹⁰ SCHWINEKÖPER, “*Cum aquis aquarumve decursibus*”, p. 33.

¹¹¹ SCHWINEKÖPER, “*Cum aquis aquarumve decursibus*”, p. 35.

¹¹² Here are a few examples: *BM*² 985 (954), 23 Jan. 839; *BM*² 993 (962), 23 Apr. 839; *BM*² 1001 (970), 29 Dec. 839; *BM*² 1005 (974), 8 May 840.

¹¹³ In addition to charter *BM*² 1001 (970) mentioned in the preceding note, see also *BM*² 558 (539), 29 Dec. 824 and *BM*² 907 (878), 4 Oct. 833.

items are enumerated.¹¹⁴ The expression “*cum ... casa dominicata et reliquis mansis, aedificiis ...*” in the description of Cluny, along with a few insignificant variants in the three other cases becomes each time “*cum casis/mansis, domibus aedificiis ...*” in the charter of Louis the Pious, as if the notary were reticent to speak of “*mansus dominicatus*”, even though this term is not unusual in other charters.¹¹⁵ On the whole, the notary did adopt the description in the *commutatio*, with the exception of the *villa* known as *Loptaniaco* which is said to have a *domus* of which there is no mention in the *commutatio*, whereas that of Lusigny inexplicably loses its “entries and exits”. An interesting detail related to Cluny is that the *villa* supposedly includes orchards¹¹⁶ (“*cum ... vercariis*”), of which no mention is made in the confirmation charter of Louis the Pious,¹¹⁷ although there is a reference to pastures (“*cum ... pascuis*”), a common word in the appurtenances formulae¹¹⁸ and also present in the *commutatio*, however not in reference to Cluny. Since it is difficult to imagine that this is a matter of a substitution of one for the other, we must recognise that there is either a rejection of a foreign term in the classical text of the pertinence formulae or an error resulting from routine.

Thus, we prefer the description given by the *commutatio* document, despite the rigidity of the text in which we see the dominant role of the *formulae*, in order to understand what the *villa* of Cluny comprised at the beginning of the ninth century.¹¹⁹ This remark leads to another; if we must question the descrip-

¹¹⁴ The imperial notary enumerates the various elements in an order, different from that used in the *commutatio*. When the descriptions are the same, there is no reason to gloss over this fact.

¹¹⁵ In addition to the charter *BM*² 985 (954), which we have already mentioned, see also *BM*² 963 (932), 24 Aug. 836.

¹¹⁶ See J.F. NIERMEYER, *Mediae Latinitatis Lexicon Minus* (Leiden, 1954-1976), p. 1074, art. “vercheria”. We find mention of these orchards in the gift made by Hava (around the end of the ninth century); see *infra*, note 119.

¹¹⁷ This word is not to be found in the index to *MGH Formulae* (p. 781), which is confirmed for the Merovingian *formulae* by the table published by SCHWINEKÖPER, “*Cum aquis aquarumve decursibus*”, p. 55. The term is also missing from the word-list of the “chancery” of Arnulf (*ibid.*, p. 56), the large number of whose charters with an appurtenances formula is especially helpful in the study of the appurtenances vocabulary (*ibid.*, p. 37). The term is found, however, in a restitution charter of Charles the Bald for the Church of Lyon (869-875) (see *Actes de Charles le Chauve* 2, No. 385, 869-875, pp. 363-364).

¹¹⁸ See the charters *BM*² 558 (539), 907 (878), 963 (932), 985 (954), 993 (962) and 1005 (974) referred to *supra*, notes 112-113 and 115.

¹¹⁹ *Cart. Mâcon*, No. 55, p. 42: “... villam in pago Maticensi, cujus vocabulum est Cluniacum, ipsam vilam cum capella, casa dominicata et reliquis mansis, edificiis, exiis et regressis, vineis, vercariis, campis, pratis, silvis, farinariis, aquis aquarumque decursibus, mancipiis illic commanentibus vel agnatione eorum, omnia et ex omnibus ibidem adjacentibus, totum et ad integrum”. For comparison, we give the description found in the gift of Hava to William the Pious, dating from the end of the ninth century (*Chartes Cluny*, No. 53, pp. 61-62): “... quandam villam meam

tion of exchanged properties in this charter, why is it not necessary to do so in other charters? We must conclude that we cannot take everything literally in the charters confirming exchange, nor in any of the others. We find ourselves on ground which we believed to be firm but could collapse under our feet. How can we explain this seeming lack of precision on the part of the notaries? To try to answer this question brings up the importance of another question: what was the purpose of the charters confirming exchanges?

The Significance of Exchange Confirmation Charters

The concurrent presence of certain documents found in archives about which we might believe that one (a confirmation charter) could replace another (a charter of exchange) proves that they were in reality complementary. The purpose of the charter was not to describe the property but to confirm the exchange by royal authority, which explains particular losses of information, as we see in comparing the charter of exchange concluded on 24 May 811 between the Bishop of Freising and the nobleman Rifuin and the confirmation of 23 August 816 (this is far from being the only example of late confirmation).¹²⁰ The confirmation charter was intended to guarantee the stability of the exchange at a moment that it was challenged in the law as defined by the capitularies.

It is normal to question the advantage for the recipient of such a confirmation charter, but we must also question the possible advantage for the author in being asked to confirm an exchange. Did the king receive a remuneration, aside from any possible legal costs for drawing up the charter? We find a suggestion of an answer in a charter of Louis the Child dated 19 March 907; the king confirms an exchange as requested by the Abbot of Fulda and the envoy of the

*nomine Cluniacum, in pago Matisconense, supra fluvium quae vocatur Grona sitam, cum omni sua integritate et sibi pertinentibus atque legitime aspicientibus ... Hanc villam cum omnibus quae ad eam pertinent, tam in ecclesiis quam in capellis, mancipiis utriusque sexus, exceptis mancipiis XX, mansis, olchis (these are fertile fields; see NIERMEYER, *Lexicon Minus*, p. 738, art. "olca"), viridiariis (these are orchards, cf. *ibid.*, p. 1111, art. "viridarium"), campis cultis et incultis, vineis, pratis, farinariis, aquis aquarumque decursibus, exitus et regressus ...". In the famous text of the gift of William the Pious, there is no mention of orchards (*Chartes Cluny*, No. 112, pp. 124 ff.).*

¹²⁰ In the case of Freising, this phenomenon may perhaps be explained by the death of Bishop Atto a few months after the exchange was concluded. See also another charter of Louis the Pious, an exchange concluded for the benefit of the Bishop of Würzburg, *BM² 971* (940), 20 Dec. 837, and *MGH D O II*, No. 59, 11 Sept. 973, p. 69, and No. 64, 22 Oct. 973, pp. 74-77.

Abbot of Echternach.¹²¹ The king supposedly makes a gift himself (*traditio*) by allowing this exchange, but seemingly loses nothing. This charter, which confirms the exchange between two ecclesiastical institutions (a very rare occurrence), followed the model of a deed of gift, because the exchange is granted “for the salvation of the soul of our late father Arnulf and also of us and our parents”.¹²² In other words, the king derived a spiritual benefit upon the conclusion of the exchange and the granting of his confirmation.

The power to confirm exchange charters belonged to the sovereign. We find a most interesting charter related to this of Duke Arnulf of Bavaria of 13 September 908 in which he confirms an exchange between the auxiliary bishop (*chorepiscopus*) of Freising, Kuno, and his bishop, Drakolf which is most interesting.¹²³ Arnulf claimed royal prerogative; this document offers important evidence on this issue.¹²⁴ It would seem that charters which appear to be routine could serve for grander designs. Also from this point of view, we note the change from one institutional system to another during the ninth and tenth centuries.

¹²¹ MGH D LK, No. 53, p. 179.

¹²² MGH D LK, *ibid.*: “*pro remedio benae memoriae animae pii genitoris nostri Arnolphi ac deinde nostrae parentumque nostrorum*”.

¹²³ K. REINDEL, *Die bayerischen Luitpoldingen, 893-989: Sammlung und Erläuterung der Quellen* (Munich, 1953), pp. 77-78.

¹²⁴ H.C. FAUßNER, *Zum Regnum Bavariae Herzog Arnulfs (907-938)* (Vienna, 1984), pp. 8-10.

What to Write in Court: Literacy and Lawsuits in Late Medieval Austria

HERWIG WEIGL

Literacy and, as a part of it, charter production increased in late medieval Austria as compared with earlier periods,¹ so research on this topic preferred to focus on the latter as a result.² The following remarks should therefore be considered no more than a preliminary contribution to research on the questions of why late medieval charters were written and what impact litigation had on literacy.³

¹ H. FICHTEAU, "La situation actuelle des études de diplomatique en Autriche", in: *BEC* 119 (1961), pp. 5-20, at p. 7; H. STEINACKER, "Diplomatik und Landeskunde. Erläutert am Stand der Forschung für die österreichischen Alpenländer", *MIÖG* 32 (1911), pp. 385-434, at pp. 407-416.

² H. FICHTEAU, *Das Urkundenwesen in Österreich vom 8. bis zum frühen 13. Jahrhundert* (Vienna, Cologne and Graz, 1971: *MIÖG Ergänzungsband* 23), pp. 7-8; the attempt coming closest to a systematic treatment of late medieval Austrian charters is I. LUNTZ, "Die allgemeine Entwicklung der Wiener Privaturkunde bis zum Jahr 1360" and ID., "Beiträge zur Geschichte der Wiener Ratsurkunde" (Vienna, 1917: *Abhandlungen zur Geschichte und Quellenkunde der Stadt Wien* 1-2), based on the limited sample from Vienna; a recent impression is R. HÄRTEL, "Zum Urkundenwesen im Spätmittelalter", in: *Schatz und Schicksal: Steirische Landesausstellung 1996*, ed. O. FRAYDENEGG-MONZELLO (Graz, 1996), pp. 155-163. The situation will be improved by the research done on the Habsburg chancery by Christian Lackner at the Institut für Österreichische Geschichtsforschung in Vienna. In general terms, O. REDLICH, *Die Privaturkunden des Mittelalters* (Munich and Berlin, 1911: *Handbuch der mittelalterlichen und neueren Geschichte* IV.3) is still useful.

³ My foremost concern are the lay courts in the countryside, dealing with cases of the minor nobility and, perhaps, the upper stratum of the peasantry. These courts met at best a few times a year, or when the need arose. To some extent I also consider the better-organized courts of the Church, the ducal government and the towns developing into fully-fledged institutions. Cf. H. WEIGL, *Materialien zur Geschichte des rittermäßigen Adels im südwestlichen Österreich unter der Enns im 13. und 14. Jahrhundert* (Vienna, 1991: *Forschungen zur Landeskunde von Nieder-*

Emperor Frederick II, or whoever drafted his Statute of Peace (*Mainzer Reichslandfriede*) in 1235, knew the answers: the judge sitting in his place in the imperial—or rather royal—court in Germany ought to have a scribe who was to write down the names of proscribed persons and plaintiffs, the cause of the accusations, the time when proscriptions were incurred, who was freed of them, the names, rank and origin of the guarantors or what other guarantees there were; moreover, this scribe was to receive and keep the letters of the suing parties, keep lists of persons declared criminal, but to delete their names if they proved successfully to be innocent, record all important sentences, especially in difficult matters in order to have a precedent for similar cases—which implies that one hoped to find these entries again when needed.⁴

These are regulations laid down by central government, and therefore by their very nature they have little to do with reality.⁵ There are no archives of such formidable super-scribes from the thirteenth century, and thus my questions remain to be answered; they will remain so because I can only offer some chance observations. My sources represent only a small part of the available material,⁶ although late medieval Austria—the old duchy, approximately today's province of Lower Austria, and most of the neighbouring Upper Austria—cannot compete with regions such as the Mediterranean or England and France in the production of written records.⁷ Nor is there a comparable degree of centralisa-

österreich 26), pp. 262-286. But it does not make sense to draw too strict a line, or to exclude ecclesiastical litigation as, after all, the people involved formed a single society, and in many instances were present in different courts.

⁴ *MGH Const.* 2, ed. L. WEILAND (Hannover, 1896), No. 196, p. 247 § 29; No. 196a, pp. 262-263 § 29; *MGH Const.* 3, ed. J. SCHWALM (Hannover, Leipzig, 1906), p. 279 § 32; F. BATTENBERG, *Gerichtsschreiberamt und Kanzlei am Reichshofgericht 1235-1451* (Cologne and Vienna, 1974: *Quellen und Forschungen zur höchsten Gerichtsbarkeit im alten Reich* 2), pp. 15-27.

⁵ BATTENBERG, *Gerichtsschreiberamt*, pp. 42-44. It was almost realized in parts of late medieval Bavaria (cf. H. SCHLOSSER, *Spätmittelalterlicher Zivilprozeß nach bayerischen Quellen. Gerichtsverfassung und Rechtsgang* (Cologne and Vienna, 1971: *Forschungen zur deutschen Rechtsgeschichte* 8), pp. 129-138, 432-434).

⁶ The documentation offered here, often chosen at random from the region I know best, is insufficient and ought to be understood as illustrative only. The examples cited could be increased or replaced by many others. Much of the charter material which forms the background for this paper is printed in *UBLOE* and in the series *FRA*.

⁷ M.T. CLANCHY, *From memory to written record: England 1066-1307*, 2nd edn. (Oxford and Cambridge, Mass., 1993; first edn. 1979); *Kommunales Schriftgut in Oberitalien: Formen, Funktionen, Überlieferung*, ed. H. KELLER and T. BEHRMANN (Munich, 1995: *MMS* 68), esp. T. BEHRMANN, "Von der Sentenz zur Akte: Beobachtungen zur Entwicklung des Prozeßschriftgutes in Mailand", pp. 71-90; M. VALLERANI, "Modelli processuali e riti sociali nelle città comunali", in: *Riti e rituali nelle società medievali*, ed. J. CHIFFOLEAU, L. MARTINES and A. PARAVICINI BAGLIANI (Spoleto, 1994: *Centro Italiano di Studi sull'Alto Medioevo, Collectanea* 5), pp. 115-140; cf. also the relevant papers in: *Pragmatic Literacy, East and West, 1200-1330*, ed. R. BRIT-

tion in the administration of justice in late medieval Austria.⁸ But it may be interesting to see how literacy was used in this region and society.

Literacy in law-courts—or rather: in litigation—might mean a very elaborate system of legal and administrative records, letters, pamphlets, protocols of the course of litigation and of the decisions, and also account-books covering the financial side. But this is not the case in the region under review. As my topic pertains to the proceedings of “everyday” litigation, I am excluding the “normative sources”, such as law books or customaries defining what was forbidden and what ought to be done, or how crimes were to be punished and by whom, even though this has often been transmitted in charters as well, e. g. privileges for towns or monasteries, or even sentences formally laid down in law-courts.⁹ Nor will I dwell on literacy in court in a wider sense, which would include charters—and other kinds of written records—as a means of proof,¹⁰ or on the question of whether the judges had some written tool for finding their decisions, sitting on their benches with an open law-book at hand. They did not, but the thought is not completely off-hand.¹¹

NELL (Woodbridge, 1997): T. BEHRMANN on the Lombard city communes (pp. 25-41), O. GUYOTJEANNIN on France (pp. 51-71), M. PRESTWICH (pp. 95-106), P.D.A. HARVEY (pp. 107-118) and G. MARTIN (pp. 119-130) on England (Germany is represented only by two short studies on three atypical cities: M. GROTEN on Cologne (pp. 81-88) and M. NORTH on Lübeck and Hamburg (pp. 89-93)). The appropriately-titled paper by A. PETRUCCI and C. ROMEO, “Scrivere ‘in iudicio’: Modi, soggetti e funzioni di scrittura nei placiti del ‘regnum Italiae’ (secc. IX-XI)”, *Scrittura e Civiltà* 13 (1989), pp. 5-48, is concerned with the palaeography of the subscriptions.

⁸ On the development of the Austrian judicial organization on its different levels, cf. the classical and still unsurpassed study of A. LUSCHIN VON EBENGREUTH, *Geschichte des ältern Gerichtswesens in Österreich ob und unter der Enns* (Weimar, 1879).

⁹ For an example—included here—see *infra*, note 61.

¹⁰ Random examples: 1373 April 28, in: *Quellen zur Geschichte der Stadt Wien* II.1, ed. K. UHLIRZ (Vienna, 1898), No. 825, pp. 197-198: the abbot of the Scots’ monastery in Vienna had to withdraw his claims after his charters and those of the opponent were read in court; 1358 Nov. 3, in: *ibid.*, No. 515, p. 122: duke Rudolf IV and his council decided a dispute over commercial rights between Vienna and Wiener Neustadt after examination of their privileges; 1365 Oct. 28, in: *FRA* II, 35, No. 748, p. 344: the bishop of Freising, whose possessions had been spoliated, was allowed to claim his lost privileges anew if he could prove their existence by “old registers”; 1393 Oct. 16, in: *UBLOE* XI, No. 241, pp. 207-208: a judge examined the seigniorial survey in a quarrel about rents between a parson and his serfs. H.J. BUDISCHIN, *Der gelehrte Zivilprozeß in der Praxis geistlicher Gerichte des 13. und 14. Jahrhunderts im deutschen Raum* (Bonn, 1974: *Bonner rechtswissenschaftliche Abhandlungen* 103), pp. 210-214.

¹¹ The Bavarian statute of 1346 (*Oberbayerisches Landrecht*) issued by king Louis “the Bavarian” demanded exactly that, and its authors ordered that a scribe must be at hand to read what the lawcode says: W. JAROSCHKA, “Ludwig der Bayer als Landesgesetzgeber”, *Zeitschrift für Bayerische Landesgeschichte* 60 (1997), pp. 135-142, esp. pp. 139, 141-142; SCHLOSSER, *Zivilprozeß*, pp. 129-130, 405-408; and the *Reformatio Sigismundi*, a reform concept for Church and Empire written by a grim critic in the early fifteenth century, called for jurisdiction according to

Charters are the most-common but not the only written sources deriving from law courts. In some of the towns, the municipal authorities began to develop more sophisticated ways of administration than issuing charters and forgetting about them.¹² Books, usually known as *Stadtbücher*, were kept by town-councils, in which everything that was done at the municipal court was recorded, i.e. administrative matters of public concern, all litigation, punishments, agreements and settlements between the citizens. This was done to keep all this in memory after the participants had died, in order to avoid renewed trouble. The entries into the book were therefore considered to have the same validity as sealed charters.¹³ Others, containing mostly wills,¹⁴ provide a two-step approach to eternity:¹⁵ even when there were no longer living members of a family, there would still be the institutional city council whose mortal members could hand the book down to their successors. Such manuscripts, which commence in the fourteenth century, are often very casual compilations where everything could be written down and little could be found again. Using these books, however, was a step towards everyday literacy, following examples set elsewhere north of the Alps.

Leaving the towns aside, the central government provides some material.¹⁶ The ducal law court issued charters, but also provided a late fourteenth-century manuscript, the *Fronbuch*:¹⁷ a session-by-session record of the plaintiffs who wanted to support their action by legally seizing a certain property from the defendants, in order to force them to answer the complaint; if the defendants excused themselves reasonably, they obtained adjournments which were re-

an imperial law book (which did not exist): *Reformation Kaiser Sigismunds*, ed. H. KOLLER (Stuttgart, 1964: *MGH Staatsschriften des späteren Mittelalters* 6) 296-297.

¹² Cf. the detailed study by B. POHL-RESL, *Rechnen mit der Ewigkeit: Das Wiener Bürgerspital im Mittelalter* (Vienna and Munich, 1996: *MIÖG, Ergänzungsband* 33), and the survey in H. WEIGL, "Schriftlichkeit in einer spätmittelalterlichen Kleinstadt", *MIÖG* 100 (1992), pp. 254-267, at pp. 255-261.

¹³ O. STOWASSER, "Das Stadtbuch von Waidhofen an der Thaya", *Jahrbuch für Landeskunde von Niederösterreich*, Neue Folge 15-16 (1916-1917), pp. 1-116, cf. p. 40 (from 1404). Cf. also 1385 May 14, in: *FRA* II, 51, No. 768, pp. 687-689, on questions of validity; REDLICH, *Privaturkunden*, p. 193.

¹⁴ E.g., *Die Wiener Stadtbücher 1395-1435*, ed. W. BRAUNEDER, G. JARITZ and C. NESCHWARA (Vienna, 1989 and 1998: *FRA* III, 10.1-2); H. DEMELIUS, *Aus dem Stadtbuch von Mautern an der Donau (1432-1550)* (Vienna, 1972: *Sitzungsberichte der Österreichischen Akademie der Wissenschaften, phil.-hist. Klasse* 277.2); WEIGL, "Schriftlichkeit", pp. 260-261.

¹⁵ POHL-RESL, *Rechnen mit der Ewigkeit*.

¹⁶ LUSCHIN, *Gerichtswesen*, pp. 66-103; A. Ritter VON WRETSCHKO, *Das österreichische Marschallamt im Mittelalter: Ein Beitrag zur Geschichte der Verwaltung in den Territorien des deutschen Reiches* (Vienna, 1897), pp. 110-140.

¹⁷ LUSCHIN, *Gerichtswesen*, pp. 3-4.

corded as well. Thus here we see only the preparatory stages of the lawsuits. This practice of forcing offenders to court was already mentioned one hundred years earlier in the Austrian *Landrecht*,¹⁸ the law-book—or rather a customary—of the duchy. There, too, terms were fixed for the defendants to appear in court. This system could only have worked with the help of writing down at least names, dates and summonses, which means that the *Fronbuch* must have had some predecessor, and the *Reichslandfriede* proves that such an administration was conceivable.

The *Landrecht* also mentions a scribe sitting beside the ducal judge,¹⁹ thus raising the question of the staff working in lawcourts. But this scribe did not record judicial matters proper: it was his duty to write down the thing that mattered most to the duke in legal practice: the fees and fines the judge received from the culprits. Considering the fact that the text ascribes, quite uncommonly, a salary to the judge, the revenues may have been expected to fall to the duke. Apparently Frederick II's concept of writing in court was more sophisticated than this. And even if the more pragmatic Austrian way worked in the central court, this is only the highest level of jurisdiction, meaning that it says nothing about the degree of literacy in common courts elsewhere in the country. The mere existence of charters written in the course of litigation is already informative, but is there and can there be any evidence that these were written in court? Or are these merely records of the results written some time later from memory?

Charters either tell only the outcome of the litigation or report what happened there. If in the latter case there are traces of the spoken word, the charter itself or some kind of protocol may have been written immediately. But before proceeding to literacy by searching for orality, we must not forget that there were many law-courts on many levels, accessible for various social groups. These various courts followed different norms, lay and ecclesiastical, regular or formed ad hoc, and all of them provided charters for Austrian destinataires. They involved people of different positions in society, with different levels of education, following different rules of law. We must not muddle up the jurisdiction of the papal curia with that in manor courts, but as everything was interconnected in some way within society and one and the same person might act on more than one level, the lines between them also may not be carved in stone.

¹⁸ V. HASENÖHRL, *Österreichisches Landesrecht im 13. und 14. Jahrhundert: Ein Beitrag zur deutschen Rechtsgeschichte* (Vienna, 1867), art. 18, pp. 242-243; cf. M. WELTIN, "Das österreichische Landrecht des 13. Jahrhunderts im Spiegel der Verfassungsentwicklung", in: *Recht und Schrift im Mittelalter*, ed. P. CLASSEN (Sigmaringen, 1977: *Vorträge und Forschungen* 23), pp. 381-424.

¹⁹ HASENÖHRL, *Landesrecht*, art. 70, p. 263.

Ecclesiastical litigation following canon law needed more of writing,²⁰ and Austrian clerics were capable of using and abusing canon law and its implications in court.²¹ But much of what was written in the course of a canon law procedure leading up to the final sentence or its alternative—the agreement (*compositio*)²²—was not meant for retention. Even when the original libels, citations, the parties' propositions, and testimonies of the witnesses have been lost, there is still a chance that they were inserted in the sentence,²³ or that a papal delegation was inserted in the summons.²⁴ This kind of literacy had significant influence on legal consciousness and on the principles of writing charters. Here we meet the effects of papal government working at its most important issues, more important than any hierocratic claims of supremacy raised by some popes and echoed in canon law and political theology.²⁵ Learned men

²⁰ Cf. the step by step discussion of the proceedings and the sources in BUDISCHIN, *Zivilprozeß*; K. NEHLSSEN-VON STRYK, "Der römisch-kanonische Zivilprozeß in der gesellschaftlichen Realität des 13. Jahrhunderts", in: *Die Bedeutung der Wörter: Studien zur europäischen Rechtsgeschichte: Festschrift für Sten Gagnér zum 70. Geburtstag*, ed. M. STOLLEIS (Munich, 1991), pp. 313-326; W. TRUSEN, "Zur Urkundenlehre der mittelalterlichen Jurisprudenz", in: *Recht und Schrift*, pp. 197-219; J.A. BRUNDAGE, *Medieval Canon Law* (London and New York, 1995), pp. 123-124.

²¹ O. HAGENEDER, *Die geistliche Gerichtsbarkeit in Ober- und Niederösterreich. Von den Anfängen bis zum Beginn des 15. Jahrhunderts* (Linz, 1967: *Forschungen zur Geschichte Oberösterreichs* 10), pp. 108 and *passim*; O. HAGENEDER, "Zur Anwendung des gelehrten Prozeßrechts in Bayern gegen Ende des 13. Jahrhunderts", in: *Vom mittelalterlichen Recht zur neuzeitlichen Rechtswissenschaft: Bedingungen, Wege und Probleme der europäischen Rechtsgeschichte*, ed. N. BREISKORN a.o. (Paderborn etc., 1994), pp. 209-221; W. STELZER, *Gelehrtes Recht in Österreich: Von den Anfängen bis zum frühen 14. Jahrhundert* (Vienna, Cologne and Graz, 1982: *MIÖG, Ergänzungsband* 26); W. STELZER, "Die Rezeption des gelehrten Rechts nördlich der Alpen", in: *Kommunikation und Mobilität im Mittelalter: Begegnungen zwischen dem Süden und der Mitte Europas (11.-14. Jahrhundert)*, ed. S. DE RACHEWILTZ and J. RIEDMANN (Sigmaringen, 1995), pp. 231-247.

²² HAGENEDER, *Gerichtsbarkeit*, pp. 211-214; NEHLSSEN-VON STRYK, "Zivilprozeß", pp. 318-319.

²³ The editor of a sentence of 1284 June 6, in: *FRA* II, 31, No. 384, pp. 408-420, printed the inserted charters separately in chronological order, thus ending up with 17 entries: *ibid.*, No. 377, p. 401, Nos. 379-382, pp. 404-407 from the immediate proceedings, and the earlier charters as No. 101, pp. 99-100, Nos. 176-179, pp. 175-178, No. 181, p. 179, No. 183, pp. 181-185, No. 185, pp. 190-191, No. 336, pp. 357-358 and Nos. 346-347, pp. 365-367; cf. HAGENEDER, "Anwendung".

²⁴ 1235, in: *FRA* II, 51, Nos. 113-116, pp. 122-126, are part of the written output of papal delegates in a lawsuit between two monasteries (one of the litigants was absolved from excommunication, the prince was informed, and the parties were summoned, the papal commission to prove their legitimate proceedings was inserted); 1324 Dec. 14, in: *FRA* II, 35, No. 558, pp. 140-144: the executor inserted two papal bulls.

²⁵ O. HAGENEDER, "Die Übernahme kanonistischer Rechtsformen im Norden", in: *Kommunikation und Mobilität*, pp. 249-260; BRUNDAGE, *Canon Law*, pp. 175-179.

could well dispute and discuss such issues, which sometimes came to political relevance, but these discussions arguably had less effect on the people I am concerned with than literacy did.

In courts less sophisticated, too, a greater amount of literacy was the result when some of the techniques of the ecclesiastical procedure were adopted, even in litigation carried on by lay people or involving them.²⁶ At least in the thirteenth century, means of fact finding (*inquisitiones*) were considered necessary for reasonable decisions. Only a few of the answers (*kuntschaft*, *weisung*) sent back by witnesses or investigating delegates still remain,²⁷ but these might be referred to in the sentence.²⁸ Literacy and orality met when a delegate asked honourable and elderly men how things had been before and the duke took his written report as a guideline for sentencing.²⁹ In a report on the negotiations and propositions of two litigant parties in front of the investigators (*verhörer*), the “story” is told grammatically in the third person in a protocol-like way, and only the end shifts to the first person: “I have sealed this charter”, giving the piece of parchment the character of a charter.³⁰

Most of my examples derive from litigation concerning property and civil matters. Crime is a matter for the courts but hardly one for literacy, with stray exceptions such as a charter on an alleged murder case.³¹ Some town councils, usually identical with the municipal law court, kept some kind of registers with entries of criminal cases, but very few of these are still extant in Austria.³² The

²⁶ NEHLSSEN-VON STRYK, “Zivilprozeß”, pp. 321-326. For an Italian example, cf. BEHRMANN, “Sentenz”, pp. 78-89.

²⁷ Ca. 1265, in: *UBLOE* III, No. 366, pp. 343-344; 1293 May 10, in: *UBLOE* IV, No. 204, pp. 188-189; cf. SCHLOSSER, *Zivilprozeß*, pp. 371-375.

²⁸ 1270 Feb. 7, in: *Urkundenbuch zur Geschichte der Steiermark* IV, ed. G. PFERSCHY (Vienna, 1975), No. 375, pp. 225-226 (= *CDB* v.3, ed. J. ŠEBÁNEK and S. DUŠKOVÁ (Prague, 1982), No. 1504, pp. 325-326): the delegate “has notified us in writing (*suis nobis litteris intimavit*)”. Often the terms of papal letters were used in which this practice was routine.

²⁹ 1381 Oct. 4, in: *FRA* II, 33, No. 264, pp. 297-298: the duke had “seen and heard” the report (“... *daz wir gesehen und gehoert haben die chuntschaft*”).

³⁰ 1362 Feb. 20, in: *FRA* II, 51, No. 596, pp. 531-533: “These are the negotiations ... (*Daz sind di tayding ... / ... hab ich ... und ich ... unsrew paydew insygel gelegt an den ... brief*)”.

³¹ Herrschaftsarchiv Abensberg-Traun in Petronell, charter 1416 June 12 (not printed): the accused denied being a murderer, having “honorably” killed two men who were notoriously his enemies (“*er hiet zwen erstochen, die weren sein abgesagt feint gewesen, und hiet das erberlich getan*”); he was acquitted. I am indebted to DDr. Helmut Matejka for showing me this text.

³² H. MANDL-NEUMANN, “Alltagskriminalität im mittelalterlichen Krems: Die Richterrechnungen der Jahre 1462 bis 1478”, *Mitteilungen des Kremser Stadtarchivs* 23-25 (1985), pp. 1-144; WEIGL, “Schriftlichkeit”, pp. 265-266.

kind of charter most likely to be written was the *Urfehde*, a guarantee by persons convicted or imprisoned not to take revenge.³³

There was little need for literacy in “traditional” lawsuits where people assembled and brought forward their positions in a formalised way, where witnesses declared under oath that one party was right and the other one not, and where somebody proposed a sentence which was accepted by the participants.³⁴ The outcome may have been written down in a charter, but this may solely have been the business of the litigants rather than that of the judge. The most usual way of terminating a quarrel was a compromise acceptable to both sides. For example, the property-rights of one party were accepted by the other one, but the latter kept the property in hand for the remainder of his life, perhaps as a fief, and paid a small rent not for the worth of it but as a manifestation of the other’s rights,³⁵ or donated it for the salvation of his soul,³⁶ or took whatever ways there were to end a deadlock without too much cost and without loss of face. In such cases, what preceded the litigation may or may not have been recorded. Examples range from arbitration and charters issued by the elected arbitrators³⁷ to charters issued by one of the parties—hardly ever both together; instead they would exchange charters—mentioning the conflict and sometimes telling who negotiated and/or witnessed the settlement. Or the parties simply compiled a very common charter stating the sale or donation or whatever solution was found, naming the motives only in general terms³⁸ or not at all. A

³³ 1347 March 11, 1447 Aug. 17, in: *FRA* III, 1, No. 38, pp. 37-38; No. 174, p. 173; 1355 Jan. 7, in: *UBLOE* VII, No. 385, pp. 396-397; 1389 Nov. 1, *UBLOE* X, No. 746, p. 579; cf. L. KOLMER, *Promissorische Eide im Mittelalter* (Kallmünz, 1989: *Regensburger Historische Forschungen* 12), pp. 136-142.

³⁴ J.W. PLANCK, *Das Deutsche Gerichtsverfahren im Mittelalter: Nach dem Sachsenspiegel und den verwandten Rechtsquellen*, 2 vols. (Braunschweig, 1879), *passim*, esp. I, pp. 133-135; J. STRNADT, “Materialien zur Geschichte der Entwicklung der Gerichtsverfassung und des Verfahrens in den alten Vierteln des Landes ob der Enns bis zum Untergange der Patrimonialgerichtsbarkeit”, *AÖG* 97 (1909), pp. 161-520, at p. 184; SCHLOSSER, *Zivilprozeß*, pp. 392-399.

³⁵ 1272, in: *UBLOE* III, No. 439, p. 402; 1280 Feb. 1, in: *FRA* II, 33, No. 87, pp. 104-105; 1299 May 25, in: *FRA* II, 81, No. 233, p. 110; 1303 Nov. 11, in: *FRA* II, 33, No. 121, pp. 135-136; a compromise: 1356 Nov. 10, in: *UBLOE* VII 469, pp. 476-477; a renunciation: 1390 Sept. 1, in: *UBLOE* X, No. 830, p. 639.

³⁶ 1276 Nov. 22, in: *FRA* II, 33, No. 79, p. 95: “... for the salvation of my soul ... I am content to receive ... (... *ob remedium anime mee ... sum contentus recipere* ...)”; 1306 Dec. 13, in: *FRA* II, 33, No. 127, p. 140: “for the sake of my soul ... and for that of all my ancestors who often have done harm to the aforesaid monastery (*meiner sel willen ... und aller meiner vodern sel willen, die oft dazselbe gotshaus gelaidigt habent*)”.

³⁷ 1329 April 2, in: *UBLOE* V, No. 539, pp. 534-535; 1339 Aug. 14, in: *FRA* II, 35, No. 678, pp. 269-270; 1351 March 17, in: *UBLOE* VII, No. 233, pp. 238-239.

³⁸ 1384 Nov. 19, in: *FRA* II, 33, No. 280, pp. 318: “... all charges, promises, quarrels and actions have been settled between us (... *sein bericht ... umb all vodrung, gelub, chrieg und zu-*

strange case is a charter issued by a knight who accepted a compromise found in court thirteen years earlier: he inserted the judge's charter in his own. Some years later his son sold the contested property to the adversary without explanation but in the presence of many witnesses, thus indicating some unusual matter.³⁹ We may therefore assume that many charters that appear harmless owe their existence to some quarrel and formal litigation.⁴⁰

If the judge himself—or the arbitrator(s)—issued the charter,⁴¹ there were also several possibilities. The judge may have tackled the matter directly: “the quarrel, that took place between A and B, is decided in this way”, followed by the sentence.⁴² In less ascetic and less simple texts, the judge states that he sat in court when the parties came and one sued for a certain reason, that they made their statements—or only the suing party did so—and that he asked the court what was to be done; the result is then given and the witnesses of the charter are named.⁴³

There is no chronological order from the more-simple to the elaborate, although the well-known basic rules can be cautiously applied: the longer, the

spruche)”.

³⁹ 1285 Dec. 20, 1298 May 24, 1311 Aug. 4, in: *FRA* II, 33, No. 90, p. 107; No. 103, pp. 119-121; No. 135, pp. 147-148.

⁴⁰ For a series of examples, cf. WEIGL, *Materialien*, pp. 34-38.

⁴¹ PLANCK, *Gerichtsverfahren* I, pp. 248-268, II, pp. 193-211; SCHLOSSER, *Zivilprozeß*, pp. 432-434; BUDISCHIN, *Zivilprozeß*, pp. 248-249; TRUSEN, “Urkundenlehre”, p. 208.

⁴² 1280 Feb. 25, in: *FRA* II, 33, No. 88, pp. 105-106: “*Questio illa, quam ... movit, taliter est decisa*”; or 1264 July 1, in: *UBLOE* III, No. 344, p. 321: “I want it to be known, that ... the abbot ... has obtained in our court (*cupio fieri manifestum, quod ... abbas ... in nostro consistorio ... obtinuit*)”; ca. 1300, in: *FRA* II, 33, No. 112, pp. 128-129: “has charged ... the quarrel has been ended thus ... (*hat chriegt ... der krieg ist also geendet ...*)”; 1360 May 3, in: *Urkundenbuch des aufgehobenen Chorherrenstiftes Sanct Pölten* I, ed. J. LAMPEL (Vienna, 1891), No. 427, pp. 502-503: “that in my presence the house is declared forfeited with question and sentence lawfully and freely (*das ... vor mi'r mit vrag und u'rtail rechtlich und ledichlich verfallen ist das haus ...*)”; 1372 Jan. 1, in: *ibid.*, No. 663, pp. 114-115: “therefore they quarrelled ... I have decided by sentence (*darumb sie ... chriegig und stossig gewesen sind ... Nu hab ich gesprochen und sprich ...*)”. M. VANCSEA, *Das erste Auftreten der deutschen Sprache in den Urkunden* (Leipzig, 1895), pp. 49-52, makes some remarks on the formulary.

⁴³ 1262 April 26, in: *UBLOE* III, No. 305, pp. 286-287: “when we ordered a court of law to be held, there came the abbot ... After he had chosen as advocate ... he asked for a sentence ...; by sentence of the aforesaid noble knight given in our presence ... the abbot obtained ... The witnesses are those: ... (*cum placitum ... indixissemus celebrandum, ... supervenit ... abbas ... Assumpto ... advocato ... sententiam ... requisivit ...; ... lata coram nobis per memoratum nobilem militem ... sententia ... abbas ... obtinuit ... Testes sunt hii: ...*)”; 1321 April 24, in: *UBLOE* V, No. 299, pp. 285-287; 1355 Aug. 13, in: *FRA* II, 16, No. 254, pp. 286-287; 1360 March 4, in: *UBLOE* VII, No. 678, pp. 686-687: “there came ..., when I sat in court ... and sued (*fuer mich cham ... da ich saz an ainem rechten ... und chlagt*)”.

later; and: Latin is clearer and more “professional” than German.⁴⁴ But the people involved knew nevertheless what needed to be made available to memory by writing. In spite of the seemingly clumsy wording—compared with straightforward if elaborate Latin—these sources still contain a canon of information: the judge, the parties, the object, the question for the sentence, the sentence itself, or its alternative, if the parties chose arbitrators or found a consensual agreement; then the witnesses, the persons who sealed, and the date. In most cases no reasons were given for the claim and the sentence, no arguments were weighed against one other. All we see, therefore, is the cause of the litigation, the correctness of the legal formalities—suing, asking for the sentence, finding the sentence in correct way by approved persons—and the result. The individual procedure is mostly hidden behind a check-list of its necessary steps, perhaps modelled on the ecclesiastical example.⁴⁵

But this is not a report on the proceedings in the course of the lawsuit. We do not know whether anybody took notes that were used when drafting charters,⁴⁶ nor if they were written from memory; nor whether or how the charters were made public to the parties and the jury for control. Usually there was no reason for charters to give us this information. Even though one cannot imagine an *Audiencia litterarum contradictarum* in Gramastetten or Langenlois,⁴⁷ evidence that charters were read aloud after being written would mean that they

⁴⁴ REDLICH, *Privaturkunden*, p. 208. There is a chronological order after all: due to the shift from predominating Latin to German in the 1290s, the increasing number of words per text parallels the change of language with its loss of exact phrasing, although a close study of the German charters may reveal clearer structures. Even the Latin charters, for the record, were never so businesslike or—to quote Julia Barrow at the eighth International Congress of Diplomats in Innsbruck 1993—“snappy” as, e.g., English ones. Cf. J. BARROW, “From the lease to the certificate: The evolution of episcopal acts in England and Wales (c. 700-c. 1250)”, in: *Die Diplomatie der Bischofsurkunde vor 1250: La diplomatie épiscopale avant 1250: Referate zum VIII. internationalen Kongreß für Diplomatie, Innsbruck, 1993*, ed. C. HAIDACHER and W. KÖFLER (Innsbruck, 1995), pp. 529-542; FICHTENAU, *Urkundenwesen*, pp. 241-242.

⁴⁵ H. DRÜPPEL, *Judex civitatis: zur Stellung des Richters in der hoch- und spätmittelalterlichen Stadt deutschen Rechts* (Cologne and Vienna, 1981: *Forschungen zur deutschen Rechtsgeschichte* 12), p. 308. Canon law and *ordines iudicarii* gave rules for what a sentence had to contain in ecclesiastical litigation, although the elaborate instructions were often followed only summarily. Cf. BUDISCHIN, *Zivilprozeß*, pp. 249-259.

⁴⁶ This seems to have been Bavarian practice: SCHLOSSER, *Zivilprozeß*, pp. 394, 433. For Italy, cf. H. KELLER, “Vorschrift, Mitschrift, Nachschrift: Instrumente des Willens zu vernunftgemäßem Handeln und guter Regierung in den italienischen Kommunen des Duecento”, in: *Schriftlichkeit und Lebenspraxis im Mittelalter: Erfassen, Bewahren, Verändern: Akten des Internationalen Kolloquiums 1995*, ed. H. KELLER a.o. (Munich, 1999: *MMS* 76), pp. 25-41, at pp. 35-36.

⁴⁷ 1416, July 14, in: STRNADT, “Materialien”, pp. 287-288; 1283 Aug. 14, in: *FRA* II, 21, No. 30, pp. 29-30.

were issued immediately after the lawsuit when the parties were still there.⁴⁸ If an illiterate litigant was interested in what he really carried home, this raises the question of language as well.

Up to the very end of the thirteenth century most of the charters were in Latin; the percentage of German ones slowly increasing after 1270, and only by a complete reversal in the 1290s did Latin charters become the minority.⁴⁹ Who was able to understand the Latin texts? And who was intended to understand them—the author or the addressees? Both, one would think, but sources tend to complicate matters: when the bishop of Freising and some minor nobleman settled their dispute in 1293⁵⁰ they exchanged charters of identical wording, as we know by the noblemen's charter for the bishop which has been transmitted. It contains a clause guaranteeing that no quarrel was to affect the bishop that might be caused by the translation of its German text from Latin, but that any textual ambiguity should be interpreted in favour of the bishop. Thus they had no idea of what they received—in Latin—but in exchange the noblemen issued a charter that they understood very well. They wanted to be sure—at least by hearing it read to them—that they hung their seals under a text they approved of. If litigation broke out again, there would be somebody in court able to read and to understand the Latin charter the bishop had issued for them.

Another way to issue a charter on a lawsuit was to ask a third party to do so and back the outcome with his—sometimes her—authority or professional competence.⁵¹ Public notaries were rarely employed in Austria.⁵² One notary's instrument serves well for another purpose: it records a lawsuit drawn out over several months with sessions in four different places, concisely summing up

⁴⁸ In Upper Bavaria the litigants had to appear again some days or weeks after the oral publication of the sentence to receive a charter, if they had asked for it. Cf. SCHLOSSER, *Zivilprozeß*, pp. 135-136, 432-433. According to the canonists, the judge was to publish the written sentence by reading it aloud (BUDISCHIN, *Zivilprozeß*, pp. 248-249).

⁴⁹ VANCSA, *Aufstreten*, pp. 34-35, 54-55; REDLICH, *Privaturkunden*, pp. 205-207.

⁵⁰ 1293 April 13, in: *FRA* II, 31, No. 403, pp. 440-443 (in Carniola, but included here because the bishop was an important lord in Austria as well).

⁵¹ 1266 April 4, in: *FRA* II, 81 Nos. 66-67, p. 51; 1294 June 16, in: *FRA* II, 21.1, No. 71, pp. 78-79; 1296 Jan. 1, in: *UBLOE* IV, No. 259, pp. 233-234.

⁵² C. NESCHWARA, *Geschichte des österreichischen Notariats 1: Vom Spätmittelalter bis zum Erlaß der Notariatsordnung 1850* (Vienna, 1996), pp. 157-224, collects many printed sources for the Austrian lands; HÄRTEL, "Urkundenwesen", pp. 158-159; STELZER, *Recht*, p. 238; cf. D. KOS, "Zur Problematik des öffentlichen Notariats in Krain im Mittelalter", *MIÖG* 105 (1997), pp. 57-73; SCHLOSSER, *Zivilprozeß*, p. 434; BUDISCHIN, *Zivilprozeß*, p. 260; the European context in: *Notariado público y documento privado: de los orígenes al siglo XIV: Actas del VII Congreso Internacional de Diplomática, Valencia 1986*, 2 vols. (Valencia, 1989: *Papers i Documents* 7).

what happened, thus proving that something must have been written at each session.⁵³

After this simplified summary of some ways of issuing charters deriving from legal proceedings, the main question remains what was written in the course of the proceedings. As mentioned above, charters or deeds sometimes contain traces of orality exceeding those which are a common feature, i. e. the appellative element—"I (or: we) proclaim to everybody seeing this deed or hearing it read, that ..." as the standard *publicatio*—and the use of first person.⁵⁴ But there are charters that actually contain elements of a dialogue. This is not surprising. In some way it was usual in papal letters on litigation at the Curia: "*procurator proposuit—econtra respondit pars altera ...*"; such lengthy narrations were usually copied from written libels submitted by the parties.⁵⁵ This happened even in our region in canon law litigation,⁵⁶ but hardly when litigants from the lower margins of a feudal community appeared at an assembly of vassals of their lord to dispute about their fiefs, which represent a good portion of my examples.

Saying and doing the correct—lawful and ritualised—things was of greater importance than literacy in giving and receiving fiefs.⁵⁷ There may have been an exchange of charters backing the ceremony, but this took a long time to become routine,⁵⁸ and feudal relationships remained a matter of orality in late

⁵³ Diözesanarchiv St. Pölten, charter 1340 Feb. 9, calendared in: G.E. FRIEB, "Geschichte des einstigen Collegiat-Stiftes Ardagger in Nieder-Oesterreich", *ÄÖG* 46 (1871), pp. 419-561, No. 37, p. 500 (1340); cf. HAGENEDER, *Gerichtsbarkeit*, pp. 117 ff.

⁵⁴ "... *tun chunt allen den, di disen brief lesent oder horent lesen, daz ...*" Any printed collection of charters of the period will easily provide many examples. Cf. HÄRTEL, "Urkundenwesen", pp. 160-162; P. KOCH, "Urkunde, Brief und öffentliche Rede: Eine diskurstraditionelle Filiation im Medienwechsel", in: *Artes im Medienwechsel*, ed. U. SCHAEFER (= *Das Mittelalter* 3.1 (1998)), pp. 13-44, at pp. 17-28; P. VON MOOS, "Gespräch, Dialogform und Dialog nach älterer Theorie", in: *Gattungen mittelalterlicher Schriftlichkeit*, ed. B. FRANK a.o. (Tübingen, 1997: *ScriptOralia* 99), pp. 313-321, at pp. 237-240; H. WENZEL, *Hören und Sehen, Schrift und Bild: Kultur und Gedächtnis im Mittelalter* (Munich, 1995), pp. 356-361.

⁵⁵ HAGENEDER, *Gerichtsbarkeit*, pp. 24-74, with the sources for Austria; BRUNDAGE, *Canon Law*, p. 128. These litigants' positions could be included in a sentence as well as in the mandate to the judges delegate *in partibus*; the scarcity of full-text editions of late medieval papal charters is a hindrance here.

⁵⁶ Hageneder, "Anwendung", and *supra*, note 23.

⁵⁷ Omitting to obtain the lord's formal permission for the sale of one's fief rendered the business invalid. Cf. F.L. GANSHOF, *Feudalism*, 3rd English edn. (London and New York, 1964), pp. 144-149; S. REYNOLDS, *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (Oxford, 1994), pp. 467-468. Local sources: 1327 Feb. 7, in: *FRA* II, 35, No. 572, pp. 156-157; 1335 Oct. 11, in: WEIGL, *Materialien*, pp. 343-344; 1351 Feb. 5, in: *UBLOE* VII, No. 225, pp. 227-228.

⁵⁸ 1300 Oct. 6, in: *UBLOE* IV, No. 377, pp. 351-352; 1329 Sept. 14, in: *UBLOE* V, No. 552, pp. 547-548; 1356 Jan. 7, in: *FRA* II, 35, No. 716, p. 308; 1359 Oct. 6, in: *UBLOE* VII, No. 653,

medieval Austria.⁵⁹ Maybe this is why litigation about fiefs brought about some charters with texts that are closer to the spoken word than others. However, formality in speech is characteristic for litigation as such, and any lawsuit might have been recorded as a series of dialogues. Furthermore, there are charters of arbitration by vassals without any hint of orality,⁶⁰ thus the connection between feudal litigation and “dialogic” charters remains to be investigated.

Fiefs provided another reason for including statements delivered orally in charters. When an abbot was bothered by quarrels among his vassals, he asked seven jurors how he ought to confer his fiefs. They issued a charter describing what was to be said and done in such cases, even including parts of direct speech in their text, namely the abbot’s question in their *narratio*, and the dialogue they recommended to be held between abbot and vassal. But this was meant to be a normative text, so most probably the charter was carefully drafted in the monastery after the sentence was heard.⁶¹

There are very early examples of the recording of speech. A case about the legitimacy of a vassal’s donation was negotiated in approximately 1170:

When they heard the action brought forward, Sir Ortolf rose and asked his lord Ekbert to defend him. And lord Ekbert rose and, having accepted an advocate, said that he had owned the property ...⁶²

p. 663.

⁵⁹ Even the entries in the registers of fiefs, appearing in the fourteenth century and marking the first steps towards the administration of fiefs, could be compiled on the basis of oral evidence. REDLICH, *Privaturkunden*, pp. 160-161; J. WILD, “Schriftlichkeit in der Verwaltung am Beispiel der Lehenbücher in Bayern”, in: *Schriftlichkeit und Lebenspraxis*, pp. 69-77, esp. pp. 69-70; cf. *infra*, note 61.

⁶⁰ 1359 Aug. 18, in: *FRA* II, 33, No. 220, pp. 238-240: seven vassals of a monastery issuing a judicial charter explain in the opening sentences that they were ordered to judge the matter, and why, and without a word about the further proceedings they declare their result.

⁶¹ 1364 April 21, in: *FRA* II, 33 No. 226, pp. 245-247, transmitted only as a copy in a manuscript, but, because seals are mentioned, a charter must have existed. There are more entries in the monastery’s copy describing lawsuits whose outcome was considered of great importance (1380 Feb. 12, in: *FRA* II, 33, No. 256, pp. 285-287; 1384, in: *Mitteilungen aus dem Niederösterreichischen Landesarchiv* 10 (1986-1987), pp. 63-64). Their wording is close to that of charters, but nobody is identified as issuing them. This lack of a phrase essential for valid charters proves that the texts were never intended to be issued as charters; the entries are simply documentation bordering on historiography.

⁶² 1171, in: *Urkundenbuch zur Geschichte der Babenberger in Österreich* IV.1, ed. H. FICHTENAU and H. DIENST (Vienna, 1968, 1997²: *Publikationen des Instituts für Österreichische Geschichtsforschung* 3, 4.1), No. 840, pp. 175-177: “Cum ... querimoniam audivissent, dominus Ortolfus surgens dominum suum Ekkebertum rogavit ut ... defenderet. Surgens itaque dominus Ekkebertus et accepto prolocutore dixit se ... fundum possessisse ...”.

Witnesses confirmed this and the duke then asked for the sentence in this matter. Afterwards the lawsuit moved on to the next question in the same way.⁶³

This was still a time of experiment in the drafting of charters.⁶⁴ Most of my examples come from a later, more advanced stage of formalisation, but in late medieval mass material—or rather: what is considered as such in Austria—there was ample space for variations. When Austrian vassals of the bishop of Freising assembled in 1335 to settle disputes by order of their lord, a woman sued her neighbour over the possession of a fief:

Gertrud came ... with her advocate ... and complained ...that he (her opponent Henry) did injustice by claiming the fief, and she said that the fief was hers and so had been in the time of four bishops ... and she never had renounced it. Then came Henry ... and his mother with their advocate ... and answered that the fief was their property ... and that they had bought it ... Then Gertrud's advocate said that she did not deny ... but ...

and so on; then witnesses confirmed this and the bishop asked for the sentence. "Then we (the vassals) considered the matter and found unanimously that ..." After she had won this round Gertrud asked for another sentence in her favour "because Henry had said ..." and claimed a bordering property as well. She succeeded again.⁶⁵

In 1346 a minor liege-lord from the Bavarian border, Konrad of Tannberg, tells us how he "appointed a day" for his vassals, two of whom were claiming the same fiefs, continuing that "then came young Paul of Falkenstein ... to court ... and he sued ... and he asked for the fief ... which his father and grandfather had held from me" and the lord ought to confirm that he was the legitimate heir and to enfeoff him,

⁶³ This step by step approach could also be used when doubts about the legality of the proceedings had to be cleared away. Cf. LUSCHIN, *Gerichtswesen*, pp. 194-195, with an example from 1365 involving the duke himself.

⁶⁴ FICHTEAU, *Urkundenwesen*, pp. 238-242; Paul Herold is preparing a doctoral dissertation at the Institut für Österreichische Geschichtsforschung in Vienna on the charters of the Austrian nobility (P. HEROLD, *Studien zum österreichischen Urkundenwesen im 12. und 13. Jahrhundert*).

⁶⁵ 1335 Oct. 11, in: WEIGL, *Materialien*, pp. 343-344: "da chom Gedraut ... mit vorsprechen ... und chlait ..., daz i'r ein lehen auf der Leyten ze chrieg ta'ten und sei daran irrent, und daz selb gu't ir recht lehen wa'r, und het dazselb hergebracht in nucz und in gwer von vier byscholfen von Fri'sing ... und hiet daz selb lehen und gu't nie aufgegeben. Da chom Heinreich auf der Leyten und sein mu'ter mit vorsprechen fu'r frawn Gedrauten ze antwurt und iahen, daz gu't daz wa'r i'r erbe ... und hietens gechauf't ... Do sprach fraw Gedrauten vorsprech, si laugent nicht ..., wa'r aver daz ...; als wi'r i'r ertailten, do bat fraw Gedraut darumb vragē, ... seit Hein(eich) è ge-offent het ...".

and I (Konrad) asked (the vassals) ... what they thought to be right, and they said by their oath that I should make public the claim and ask if there were somebody to object in a legal way,

otherwise he ought to enfeoff the claimant.

And so I did and as nobody came forward I asked all my vassals again... and they said ... and I enfeoffed him ...⁶⁶

It would have sufficed to write that one of the claimants had lost his case by staying away and the fief was given to the suing party by sentence of the other vassals. Nevertheless, the long story still tells only how the winning party won and may be regarded as documentation of the relevant parts of the proceedings in the same way as the shorter texts.

More elaborate descriptions of the proceedings appear in fourteenth-century Bavaria,⁶⁷ and these seem to have made an impact on the Austrian border regions. These judicial charters not only concern fiefs. In 1398 a lawsuit over a violation of the peace by the bishop of Passau's men lasted at least two days and ended with a charter suitable for a stage performance:

when I sat in court there came ... and sued ... against him came (the defendant) with credentials ... and I would have asked ..., when (the defendant) rose ... and did not want to hear the question and left the court ... Then I had asked ... and they pronounced by their oath ... and (the claimant) asked ... and it was sentenced that (a charter) ought to be brought and read ... and it was read ... and (the claimant) asked ... and I asked and it was sentenced ...

and so on, up to the final sentence and the naming of the jury and even of the advocates (*vorsprechen*).⁶⁸

⁶⁶ 1346 Oct. 16, in: STRNADT, "Materialien", p. 281: "... *daz ich einen tag für mich han gegeben ... Do cham daz kind Paul ... von Valchenstain ... und sucht den tag und sprach nach den guetern, und er wäre rechter erb ... und ich schull im leichen ... all die lechen, die sein ên und sein vater von mir hieten gehabt ... Do fragt ich ritter und chnecht ..., waz inen recht dâucht. Die urtailten auf irn ayd und ich schull haizzen gebieten und rueffen, ob iemant wêr, der die guet wolt verantworten oder versprechen ... und chaem niemant, ... es soll hinnach geschehen als recht waer. Daz hiez ich also gebieten und rufen ... Do cham niemant ... Do fragte ich aber alle meine man ...; die ertaylten ... Die lehen hab ich im also geliehen ...*".

⁶⁷ SCHLOSSER, *Zivilprozeß*, pp. 362 (note 106), 365, 394, 432-434; an early example: 1293 May 4, in: UBLOE IV, No. 203, pp. 187-188.

⁶⁸ 1398 Sept. 25/26, in: UBLOE XI, No. 831, pp. 739-742: "... *das für mich chom in offnen schrann, da ich sass an dem rechten ... und pat gerichtz ... also chom in antwurt ... mit einem gewalt briff ... Da hiet ich gern gefragt ..., da stund der obgenant marschalch .. auf ... und wollten derselben frag darumb nicht hören und giengen aus der schrann ... Darnach pat ich ... zu fragen ...; di sagten auf ir aid ... Also pat mich der vorgenant Pirchinger ... Da sagt urtail volg ..., der-*

At least in the fifteenth century such “dialogic” charters were established in Austria as well. In the court of the governor of Upper Austria in 1430, the issue included complicated questions on the rightfulness of an appeal, and an earlier sentence in favour of the claimant was brought forward as proof.⁶⁹ In a case from Lower Austria a relevant charter was even inserted.⁷⁰ A case of inheritance seems to report the dialogue between the parties: “there came the claimant (and said ...)”, and “there came the defendant” are repeated several times. Among other things the defendant stated that the property “he heard his adversary claiming” was his own, and later on they quarrelled about whether a testimony or a charter was to be heard first; so the text reflects what had been spoken.⁷¹

None of this is new, and the above-mentioned texts that are much longer and much more detailed than the older ones reflect a change not in quality but in quantity. The speeches are rendered in indirect speech and shortened—we must imagine polite addresses and the like that have been omitted here—but it seems that not a single step is missing. It is hardly possible to write all this down in an orderly way without having taken some notes. But why take the trouble? Perhaps people felt an increasing need for well-documented proceedings as proof of formal correctness, validity and legality, as they saw in ecclesiastical courts, whereas an oral lawsuit with its traditional formalism left no written evidence for the single steps necessary to achieve a valid result, which could be collected or inserted in the sentence. The lack of written material may therefore have furthered the wish to have a protocol of the oral proceedings included in the sentence. The need to tell the story may have brought about an increase in literate practices.

All this might be an answer to my question—apparently there are reasons to suppose that sometimes in some places a scribe protocolled the proceedings of

selb lantfridbrif solt her für chomen und solt gelesen werden ... also ward derselb brief gelesen ... und pat mich ... Da fragt ich, was recht wär, da sagt ...”; another example: 1394 Oct. 1, *ibid.*, No. 357, pp. 330-333; cf. PLANCK, *Gerichtsverfahren* I, pp. 222-248. Another striking example: 1448 June 10, in: *Monumenta Boica* 31.2 (Munich, 1837), No. 172, pp. 393-401.

⁶⁹ 1430 Oct. 23, in: STRNADT, “Materialien”, pp. 292-294; cf. also: 1427 Sept. 30, *ibid.*, pp. 290-292, from the earl of Schaunberg’s court, geographically situated between the Bavarian and the Austrian examples.

⁷⁰ 1439 March 9, in: *AÖG* 7, No. 25, pp. 335-337; also in Lower Austria: 1443 July 1, in: *FRA* II, 52, No. 1296, pp. 369-372.

⁷¹ 1407 Dec. 7, *Österreichische Nationalbibliothek*, Vienna, cod. 12499, f. 135v: “*da cham der chlager ... da cham der antwurter*”, “*daz güt, darumb er in hört zusprechen*”, “*der prief scholt vor der chuntschaft verhort werden*”.

a lawsuit.⁷² But we hardly ever know who wrote charters.⁷³ A large share seem to have been done by monks and parish clergy, but even though this is a reasonable assumption, there is only little proof.⁷⁴ There was the ducal chancery consisting of some clerks under a man with an impressive title.⁷⁵ There were municipal scribes, *Stadtschreiber*, in the thirteenth century,⁷⁶ but hardly any public notaries, with the exception of the southern parts of Tyrol which were in fact northern parts of Lombardy.⁷⁷ There were even some scribes employed by wealthy and powerful noblemen, usually, as could be expected, their chaplains.⁷⁸ Most likely they wrote the charters issued in regard to lawsuits involving their lords, or those in which they were judges. But for most late medieval charters, we do not know who actually wrote them or when—in relation to the acts recorded in them—they were written.

Traces of orality suggest that it was usual to write immediately in court or just after the sessions. This is what one would expect anyway,⁷⁹ but it is hardly possible to prove it. The people named as present do not necessarily help: there are no subscriptions by their own hand,⁸⁰ nor does a seal hanging on a charter

⁷² Cf. SCHLOSSER, *Zivilprozeß*, pp. 362-366, 394, 433.

⁷³ LUNTZ, "Privaturkunde", pp. 51-55, offers some observations.

⁷⁴ In 1302 Jan. 22, in: FRIEB, "Ardagger", No. 26, pp. 489-490, a canon wrote his charter of donation "*in signum vere reverentie devocionis propria manu*".

⁷⁵ W. STELZER, "Zur Kanzlei der Herzöge von Österreich aus dem Hause Habsburg (1282-1365)", in: *Landesherrliche Kanzleien im Spätmittelalter: Referate zum VI. Internationalen Kongreß für Diplomatik, München 1983*, ed. G. SILAGI (Munich, 1983-1984: *Münchener Beiträge zur Mediävistik und Renaissance-Forschung* 35.1), pp. 297-313; C. Lackner's book on the Habsburg chancery is forthcoming.

⁷⁶ W. RAUSCH, "Vom Ämterwesen der landesfürstlichen Städte an der Donau bis zur josefinischen Magistratsregulierung", in: *Verwaltung und Gesellschaft in der südwestdeutschen Stadt des 17. und 18. Jahrhunderts*, ed. E. MASCHKE and J. SYDOW (Stuttgart, 1969: *Veröffentlichungen der Kommission für geschichtliche Landeskunde in Baden-Württemberg* B 58), pp. 66-83, at pp. 70-71; LUNTZ, "Ratsurkunde", p. 88 and *passim*.

⁷⁷ REDLICH, *Privaturkunden*, p. 222.

⁷⁸ POHL-RESL, *Rechnen mit der Ewigkeit*, p. 26; R. ZEHETMAYER, *Die Struktur der Grafschaft Hardegg im 14. Jahrhundert: Vorarbeiten zu einer Edition des Hardegger Urbars von 1363* (Diplomarbeit, Vienna, 1998), pp. 56-57, 62.

⁷⁹ Cf. *supra*, note 48.

⁸⁰ Subscriptions, but not necessarily *manu propria*, are sometimes found in (arch-)bishops' charters of the twelfth and early thirteenth centuries. Cf. O. HAGENEDER, "Papsturkunde und Bischofsurkunde (11.-13. Jh.)", in: *Diplomatik der Bischofsurkunde*, pp. 39-64, at pp. 45-46 and 61-62 with Pl. 6 as an example of a series of subscriptions written by only one hand; L. GROSS, "Über das Urkundenwesen der Bischöfe von Passau im 12. und 13. Jahrhundert", *MIÖG, Ergänzungsband* 8 (1911), pp. 505-673, at pp. 605-606; FICHTENAU, *Urkundenwesen*, pp. 180-182.

prove that its owner was present at the act described there,⁸¹ and there are never enough sources to check their itineraries.

To sum up: there are very few criteria for deciding what was really written in court, or when and by whom the charters issued in the course of or as a result of litigation were written. This search for evidence may draw attention to the deficits of late medieval diplomatics. It even may have become clearer than I would have liked just how large the field of research still is.⁸²

⁸¹ C. LACKNER, "Diplomatische Bemerkungen zum Privileg Herzog Albrechts III. für die Universität Wien vom Jahre 1384", *MIÖG* 105 (1997), pp. 114-129, at 118-120; 1375 Jan. 25 and Feb. 24, in: *Urkundenbuch Sanct Pölten* II (Vienna, 1901), Nos. 684-685, pp. 157-160; REDLICH, *Privaturkunden*, p. 120.

⁸² REDLICH, *Privaturkunden*, pp. 232-233.

Part II: “From Memory to Written Record” Revisited

“From Memory to Written Record” in the Periphery of Medieval Latinitas: The Case of Poland in the Eleventh and Twelfth Centuries

ANNA ADAMSKA

Twenty-one years after its publication, Michael Clanchy's book on the rise of written culture in medieval England¹ is considered a classic. The study of the uses of writing in different social domains as performed by Clanchy² not only inspired medievalists in Great Britain, but encouraged centres of research on medieval communication in Germany (Freiburg and Münster) and the Netherlands (Utrecht) as well.³

The method employed by the English historian not only analyses the development in the use of charters *stricto sensu*, but all traces of the uses of writing in the economic life of England after the Norman Conquest are also considered. This evidence is considered in relation to all other instruments of memorization known at the time, including non-written verbal and even non-verbal means. This convincing method seems both feasible and promising for the study of other medieval regions, more in particular for the study of those periods in which written sources in general and charters in particular are scarce. Such was the situation in Poland in the eleventh and twelfth centuries. The aim of this

¹ M.T. CLANCHY, *From Memory to Written Record: England, 1066-1307*, first edn. (London and Cambridge, Mass., 1979); the second edition (Oxford and Cambridge, Mass., 1993) has been augmented considerably.

² The expressions “practical literacy”, “pragmatic literacy” and “functional literacy” have been used as synonyms (CLANCHY, *From Memory to Written Record*, pp. 3, 13, 247).

³ See M. MOSTERT, “New approaches to medieval communication?”, in: *New Approaches to Medieval Communication*, ed. M. MOSTERT (Turnhout, 1999: *Utrecht Studies in Medieval Literacy* 1), p. 34.

contribution is to discuss the passage “from memory to written record” in a country in the periphery of medieval Latinity. In Poland, the institutions and standards of occidental Latin civilization were adopted with a considerable delay. This occurred only after the official introduction of Christianity at the end of the tenth century (966).⁴ The limits of our study are set by the small number of written sources dating from the early period in Polish medieval history and by a series of unresolved questions as to their authenticity. Within the scope of this essay, only a few of the many problems treated by Michael Clanchy can be dealt with. We will, after a brief reminder of eleventh- and twelfth-century Polish history, confine ourselves to three matters. First, we will discuss the forms of written documentation in the domain of practical literacy. This will be followed by some suggestions as to the functions of writing in the activities of the various social groups. We will end with an evocation of the factors that prompted the passage to the culture of the written word.

Poland in the Eleventh and Twelfth Centuries

The passage from memory to written record was strongly influenced by political and social changes that, in the twelfth and thirteenth centuries, were numerous and often violent. From the perspective of the history of events, the period between the beginning of the eleventh century and the year 1200 shows no coherence. Crucial in this process was the coronation of prince Boleslas Khrobry in 1025. Unfortunately, the event was soon followed by a series of political crises (in the years 1030-1050, and then around the turn of the twelfth century) which endangered the stability of the central government. Nevertheless, the political unity of the country was maintained until the decision of prince Boleslas Wrymouth to divide power over the Polish lands among his four sons in 1138. In theory, based on the principle of *senioratus*, central power ought to have been exercised by the eldest member of the Piast dynasty. In effect conflicts already escalated among the four sons of prince Boleslas, to say nothing of what happened among his descendants in later generations. The definitive collapse of central power, which took place at the beginning of the thirteenth century, resulted in the multiplication of small principalities. Each of these had its own bureaucratic structure and its own politics, strongly influenced by the local aristocracy.⁵ Nevertheless, during the feudal dismemberment

⁴ The relevant bibliographical references can be found in: A. ADAMSKA, “The introduction of writing in Central Europe (Poland, Hungary and Bohemia)”, in: *New Approaches*, pp. 165-190.

⁵ See A. GIEYSZTOR, “Polen”, in: *LdM* 7, cols. 52-58. The most recent synthesis of the politi-

of the country, the idea of the political and ethnic unity of the Polish lands (*Regnum Poloniae*) never disappeared from the collective conscience. The reunification of the kingdom, symbolically occurring in 1320 by the coronation of prince Ladislas the Short, was to last in certain domains until the end of the fourteenth century.⁶

The eleventh and twelfth centuries also saw important economic and social changes, largely inspired by the advance of Christianity and the growth of ecclesiastical structures. In the beginning, the Polish Church functioned in symbiosis with the power of the State, following the model of the Carolingian and Ottonian Church (the *Reichskirchensystem*).⁷ The period at the end of the tenth century and the beginning of the eleventh century saw the establishment of the first bishoprics and the first monastic communities. The successes of this first surge of Christianity were partially wiped out by the pagan reaction of the 1030s.⁸ However, from the 1050s onwards, just when the central power of the Piasts was reestablished, the stabilisation of episcopal power, the growth of the parish network and the establishment of monastic foundations were seen. New monasteries were particularly numerous in the twelfth century. As was the case everywhere in Europe, gifts of landed property and privileges granted to the Church by sovereigns and aristocrats became the material foundation of the Church's political and judicial emancipation. Gifts and privileges became even more important during the feudal dismemberment of the country after 1138.⁹

The disappearance of central power in Poland did not cause dramatic changes in the internal organization of the Polish state. We do, however, observe some developments. The State was based on princely law (*ius ducale*¹⁰), which encompassed the sum total of social and economic relationships. The

cal history of the period is J. WYROZUMSKI, *Dzieje Polski piastowskiej (VIII wiek-1370)* (Kraków, 1999: *Wielka Historia Polski* 2).

⁶ See: *Polska dzielnicowa i zjednoczona*, ed. A. GIEYSZTOR (Warsaw, 1972); P. KNOLL, *The Rise of the Polish Monarchy. Piast Poland in East Central Europe 1320-1370* (Chicago, 1972); S. GAWLAS, "Stan badań nad polską świadomością narodową w średniowieczu", in: *Państwo, naród, stany w świadomości wieków średnich*, ed. A. GIEYSZTOR and S. GAWLAS (Warsaw, 1990), pp. 149-195.

⁷ See on this term J. FRIED, *Die Formierung Europas 840-1046* (Munich, 1993: *Oldenbourg Grundriss der Geschichte* 6), pp. 165 ff.

⁸ Cf. A. ADAMSKA, "Les problèmes de l'Eglise en Pologne et en Bohême à l'époque de Gerbert d'Aurillac", in: *Gerbert l'Européen. Actes du colloque d'Aurillac 4-7 juin 1996*, ed. N. CHARBONNEL and J.-E. IUNG (Clermont-Ferrand, 1996), pp. 247-253.

⁹ The best guide remains *Kościół w Polsce*, 1: *Średniowiecze*, ed. J. KŁOCZOWSKI (Kraków, 1966). See also: J. Kłoczowski, "La 'nouvelle Chrétienté' au XII^e siècle: De la Scandinavie aux Balkans", in: *L'Histoire du Christianisme*, 5: *Apogée de la Papauté et l'Expansion de la Chrétienté (1054-1274)*, ed. A. VAUCHEZ (Paris, 1993), pp. 309-328.

¹⁰ See G. LABUDA, "Ius ducale", in: *LdM* 5, col. 817.

ruler was both the source of law and the supreme judge, and also the owner of all land, over which he exercised a series of economic rights (*regalia*). This system developed in the eleventh and twelfth centuries through the gradual relinquishing of princely privilege to the benefit of the Church (through the granting of immunities) and the aristocracy. It does not take a great leap of the imagination to see that the coming into being of many principalities aided the emancipation of the aristocracy, and particularly that of the lower, local aristocracy and the knights.¹¹ During the twelfth century they emulated the Church. Through increasing fiscal and judicial exemptions they became a veritable economic and political force.¹²

In this contribution, we can merely mention the complex processes that took place in Poland at the time. The question we want to address is that of the ways in which writing was used by the State, the Church, and the lay aristocracy. Simultaneously, it will be interesting to see how the system of *ius ducale* developed in relation to the development of pragmatic literacy in the earlier Middle Ages in Poland.

The Documentary Sources

The documentary sources that allow us to follow the development of functional literacy in Poland during the eleventh and twelfth centuries pose several problems. First, we must distinguish between charters whose texts survive and those whose existence can only be assumed from other evidence.¹³ Next, many preserved charters are either of doubtful authenticity or outright forgeries. This situation has led to continuous *bella diplomatica* among Polish diplomatists.¹⁴

¹¹ Cf. J. BIENIAK, "Polska elita polityczna XII wieku (Część 1)" [The Polish political elite in the twelfth century (part 1)], in: *Spółeczeństwo Polski Średniowiecznej*, 7 vols., ed. S.K. KU-CZYŃSKI (Warsaw, 1982), 2, pp. 11-61.

¹² See A. GIEYSZTOR, "Les chartes de franchises urbaines et rurales en Pologne au XIII^e siècle", in: *Les Libertés Urbaines et Rurales du XI^e au XIV^e Siècle* (Bruxelles, 1968), pp. 105 ff. The decisive role of the aristocracy in internal politics is highly visible at the time of the reunification of Poland, at the beginning of the fourteenth century. See: J. BIENIAK, *Wielkopolska, Kujawy, Ziemia Łęczycka i Sieradzka wobec problemu zjednoczenia państwowego w latach 1300-1306* (Toruń, 1969).

¹³ See *infra*, note 20.

¹⁴ Extreme prudence led nineteenth-century scholars from time to time to consider almost all charters dating from before 1200 as forgeries. See, e.g. *Codex diplomaticus monasterii Tinicensis*, ed. W. KĘTRZYŃSKI (Lwów, 1875). The list of authentic royal charters before 1200 recently presented by Irena Sułkowska-Kuraś, numbers a mere ten documents (I. SUŁKOWSKA-KURAŚ, "La typologie des actes royaux polonais avant 1200", in: *Typologie der Königsurkunden*:

In these circumstances, it is impossible to arrive at a definitive list of Polish charters dating from before 1200.¹⁵ Therefore, all numbers are approximate at best.

Before 1200, 71 charters are known to have been issued by persons inhabiting the Polish lands.¹⁶ Almost half of these, thirty charters, are considered dubious or spurious; they would each need a commentary that would take far too much space here. Considering the persons mentioned in the *intitulatio* of the charters deemed authentic, apparently before the middle of the eleventh century there are almost none issued by Polish authorities. The single exception, from the end of the tenth century, is the oblation of the Polish lands to the Apostolic See by prince Mieszko. This charter, which is known only through a distorted extract, is known as the *Dagome iudex*.¹⁷ The first preserved original is the foundation of a prebend at Bamberg cathedral by prince Ladislas Hermann, datable to 1087-1095.¹⁸ The virtual absence of charters written in Poland during the eleventh centuries is comparable, *mutatis mutandis*, to the situation in Scotland and Ireland, in the Western periphery of Latin Europe.¹⁹

The situation changes in the twelfth century. We possess more witnesses to documents which either existed or must have existed, even if these witnesses need to be treated with circumspection.²⁰ The known or preserved charters of

Kolloquium de la Commission Internationale de Diplomatie in Olmütz, 30.8-3.9. 1992, ed. J. BISTRICKÝ (Olomouc, 1998), p. 251.

¹⁵ The list established by Zofia Kozłowska-Budkowa in 1937 is still to be used (Z. KOZŁOWSKA-BUDKOWA, *Repertorium polskich dokumentów doby piastowskiej* (Kraków, 1937), quoted henceforth as: *Repertorium*). This excellent publication ought to be revised on the basis of recent research.

¹⁶ The charters from Western Pommerania are not taken into account here, as the region was independent from Poland in the eleventh and twelfth centuries, and was ruled by its own dynasty.

¹⁷ See, on this charter, the bibliograpy in A. ADAMSKA, "Bibliographie de la diplomatie polonaise 1956-1996", *AfD* 44 (1998), pp. 315-316, Nos. 337-344.

¹⁸ A photograph of this charter in: S. KRZYŻANOWSKI, *Album palaeographicum*, 3rd edn. by W. SEMKOWICZ and S. BUDKOWA, 2 vols. (Cracow, 1935-1936), 1, No. 1. See also A. GIEY-SZTOR, "Bamberg a Polska w XI i XII wieku", *SZC* 15 (1971), pp. 71-83.

¹⁹ See the contribution of D. BROUN to this volume. See also: M.T. FLANAGAN, "The context and uses of the Latin charters in twelfth-century Ireland", in: *Literacy in Medieval Celtic Societies*, ed. H. PRYCE (Cambridge, 1998), p. 113.

²⁰ On the basis of the chronicle of Magister Vincentius Kadłubek, one thinks e.g., that the division of the Polish lands by prince Boleslas Wrymouth in 1138 was put into writing (Magister Vincentius, *Chronica*, III, 26: "*testamentales mandat conscribi codicillos, in quibus et auitarum vices uirtutum et regni successionem quatuor legat filiis*", ed. M. PLEZIA, *Magistri Vincentii dicti Kadłubek Chronica Polonorum*, in: *MPH* s.n. 11 (Kraków, 1994), p. 118). The question is, whether this chronicler of the end of the twelfth century, who had been educated in the intellectual centres of the "twelfth-century Renaissance", did not project onto the past the practice of written testaments with which he was familiar.

the first half of the twelfth century were issued above all by ecclesiastics;²¹ they always benefit ecclesiastical institutions.²² First testimony of a charter issued by a lay aristocrat is datable to 1130-1155; it concerns a pious donation to the regular canons of Czerwińsk.²³

The years after 1150 brought an astonishing increase in the numbers of charters produced.²⁴ From the period 1150-1200 date 25 authentic charters (to which may be added another five that must have existed). Most of these were issued in the name of rulers.²⁵ The period also saw the first charters issued by laymen. Several of their documents astonish by their meticulously elaborate forms.²⁶ As before, the beneficiaries of all charters are ecclesiastical institutions, both bishoprics and monasteries, benefitting from pious donations whose memory was fixed in writing.

The Debate about the Polish Central Chancery

The state of the documentation has produced the most divergent interpretations. These regard both the level of pragmatic literacy during the early Polish Middle Ages and the formation of the State chancery. The question of the origins of the central chancery remains a most important problem in the history of Polish diplomatics. The last word on the matter has not yet been said.²⁷ Over

²¹ *Repertorium*, Nos. 21, 29, 33, 36.

²² *Repertorium*, Nos. 14, 45.

²³ *Repertorium*, No. 56.

²⁴ The same situation can be observed, e.g. in the Scandinavian countries. See: I. LARSSON, "Nordic digraphia and diglossia", in: *Spoken and Written Language: Relations between Latin and the Vernaculars in the Earlier Middle Ages*, ed. M. GARRISON a.o. (Turnhout, 2000: *Utrecht Studies in Medieval Literacy* 4) [forthcoming]; N. DAMSHOLT, "Kingship in the arengas of Danish royal diplomas", *Mediaeval Scandinavia* 4 (1970), p. 78.

²⁵ *Repertorium*, Nos. 53, 55, 56, 61, 62, 68, 74, 78, 80, 87, 88, 89, 96, 109, 112, 113, 114, 115, 118, 119, 122, 123, 124, 125, 126, 135, 145, 150; *KDW* I, Nos. 18, 35.

²⁶ *Repertorium*, Nos. 53, 56, 109, 122. The object of discussion became the foundation charter of the Cistercian monastery at Łekno by the aristocrat Zbylut, of 1152-1153 (*Repertorium*, No. 53; ed. *KDW* I, No. 18; photograph in KRZYŻANOWSKI, *Album Palaeographicum*, 1, No. 2). The script of the document has often been associated with the region of Liège, whereas its text consists of a profound theological programme (J. STIENNON, *L'écriture diplomatique dans le diocèse de Liège du XI^e au milieu du XIII^e siècle* (Paris, 1960), *passim*; B. KÜRBIS, "Cystersi w kulturze polskiego średniowiecza: Trzy świadectwa z XII wieku" [The Cistercians in medieval Polish culture: Three witnesses of the twelfth century], in: *Historia i kultura cystersów w dawnej Polsce i ich europejskie związki*, ed. J. STRZELCZYK (Poznań, 1987), pp. 321-342).

²⁷ A review of research in: M. BIELIŃSKA, "W kwestii początków kancelarii polskiej" [Concerning the origins of the Polish central chancery], *SZC* 13 (1968), pp. 63-71.

the last century two radically different opinions have been defended. The first might be termed the pessimist view. One of its most eminent adherents, Stanisław Kętrzyński, summarized the findings of nineteenth-century thought on the matter in his fundamental synthesis of Polish diplomatics. He held that written evidence was not admitted in court before the thirteenth century. This implied that the earlier absence of preserved documents could be explained by their non-existence. According to the pessimists, the Polish central chancery was organized only at the end of the thirteenth century, at the time when the State was reunified.²⁸

The second, optimist view about the origins of the Polish chancery supposes the existence of the institution from the end of the tenth century onwards. The optimists argue that when Poland entered the orbit of occidental *Christianitas*, the country saw the implantation of all institutions and structures of feudal society. According to Karol Maleczyński, the central chancery must doubtlessly have existed from the beginning of the twelfth century onwards. Then mention is first made of princely chancellors,²⁹ even if hardly any charters survive from that period.³⁰

In the present state of research it seems beyond doubt that the production of charters was reserved to the court chaplains (*capellani curiae*). They were probably overseen by a chancellor, who may also have directed the *scriptorium* and the liturgical duties of the chaplains—in short, a practice which was current all over Europe.³¹ In Poland, however, the diplomatic activities of this *capella*

²⁸ S. KĘTRZYŃSKI, *Zarys nauki o dokumencie polskim wieków średnich* [Precis of medieval Polish diplomatics], 1 (Warsaw, 1934), pp. 84 ff. To maintain his opinion that in the eleventh century, in the realm of the first Piasts, pragmatic literacy did not at all exist, Kętrzyński argued from the theory that there existed a "period without charters" all over Europe at the time. In the light of recent research this seems a nineteenth-century hypothesis, brought into being by diplomatists who introduced an artificial typology of "*actes dispositifs*" and "*actes probatoires*" (cf. O. GUYOTJEANNIN, " 'Penuria scriptorum': Le mythe de l'anarchie documentaire dans la France du Nord (X^e-première moitié du XI^e siècle)", in: *Pratiques de l'écrit documentaire au XI^e siècle*, ed. O. GUYOTJEANNIN, L. MORELLE and M. PARISSE (Paris, 1997; special issue of *BEC* 155 (1997)), p. 13).

²⁹ The first mention of a *cancellarius* comes from the chronicle of Gallus Anonymus, who, in the dedicatory epistle of his work, mentions the chancellor Michał (Gallus Anonymus, *Cronica*, 1, Ep.: "*venerabili cancellario Michaeli, ceptique laboris opifici*", ed. K. MAŁECZYŃSKI, *Galli Anonymi Cronica et gesta ducum sive principum Polonorum*, in: *MPH* s.n. 2 (Kraków, 1952), p. 1. The names of rulers' chancellors next appear in 1147 (*Repertorium*, No. 44; ed. in: *KDW* I, No. 12).

³⁰ K. MAŁECZYŃSKI, *Zarys dyplomatyki polskiej wieków średnich* [Precis of Polish diplomatics in the Middle Ages] (Wrocław, 1951), pp. 10 ff.

³¹ M. BIELIŃSKA, *Kancelarie i dokumenty wielkopolskie XIII Wieku* [The chanceries and charters of Great Poland in the thirteenth century] (Wrocław and Warsaw, 1967), pp. 10 ff.; H. KLE-

curie were practically non-existent during the earlier Middle Ages. All princely charters for ecclesiastical institutions are written by the beneficiaries.³²

The matter at issue in the polemics surrounding the origins of the Polish central chancery is that of defining the tasks of chancellor and chancery. One should not regard the chancery as the institution producing and validating charters,³³ but rather as an office instituted by the ruler to participate in the government of the State. In this view, the elaboration of charters was but one of its tasks.³⁴ According to this point of view a lack of charters does not necessarily lead one to conclude the absence of a chancery.

It is impossible to resolve this complex matter here. We merely wish to underline that all discussion of the origins of the Polish central chancery has been vitiated by the paradigm of the superiority of the civilisation of writing over that of oral tradition and orality. The dynamics of the growth of pragmatic literacy could be wielded into an argument for Polish cultural backwardness in the battle between a superior civilisation of the written word and an inferior, if not barbarian Slav oral civilisation. In this context, the study of medieval literacy may suggest new approaches. First, it is necessary to abandon not only the fatal paradigm of the superiority of writing, but also the idea of the strict opposition between written and oral culture. One rather has to follow the lead of Michael Clanchy's suggestion that "The growth of literacy did not occur in the cultural vacuum. It replaced non-literate ways, which seemed equally natural to those who were accustomed to them. The most difficult initial problem in the history of literacy is appreciating what preceded it".³⁵

WITZ, "Kanzleischule und Hofkapelle", *DA* 4 (1940), pp. 224-228; S. KEYNES, "Royal government and the written word in late Anglo-Saxon England", in: *The Uses of Literacy in Early Medieval Europe*, ed. R. MCKITTERICK (Cambridge, 1990), p. 257; DAMSHOLT, "Kingship in the arengas of Danish royal diplomas", p. 67.

³² According to many scholars, this seems to have been standard practice everywhere in Latin Europe at the time. See, e.g. CLANCHY, *From Memory to Written Record*, p. 56; BROWN, in this vol.; FLANAGAN, "The context and uses of the Latin charters", p. 117.

³³ This nineteenth-century definition is still current in modern manuals (see O. GUYOTJEAN-NIN, J. PYCKE and B.-M. TOCK, *Diplomatique médiévale* (Turnhout, 1993: *L'atelier du médiéviste* 2), p. 223).

³⁴ BIELIŃSKA, *Kancelarie i dokumenty*, p. 9; S. KURAŚ, *przywileje prawa niemieckiego miast i wsi małopolskich w XIV-XV wieku* [Privileges according to German law for the towns and villages in Lesser Poland, in the fourteenth and fifteenth centuries] (Wrocław, 1971), p. 24.

³⁵ CLANCHY, *From Memory to Written Record*, p. 41.

The Church and Pragmatic Literacy

All princely charters issued in Poland during the twelfth century were destined for ecclesiastical institutions, for monasteries and for cathedrals. Among the monasteries, those of the "new" orders implanted just about then are preponderant among the beneficiaries:³⁶ Cistercians (Jędrzejów, Łekno, Lubiąż, Oliwa),³⁷ Knights of St. John (Zagość, Poznań),³⁸ and Canons of the Holy Sepulchre (Miechów).³⁹ Only one charter is known to have been given to an "old" Benedictine foundation of the eleventh century: the dowager princess Salomea gave a charter to Mogilno in 1143.⁴⁰ All these charters for monasteries are either foundation charters or confirmations of the property of lands and people. We have to wait for 1189 to see a first written sentence, of prince Kazimierz the Just, settling a conflict between the chapter of Pock cathedral and two *comites*. It is the first document concerning laymen, putting into writing the ruler's activities as supreme judge.⁴¹ Its late date might bear witness to the efficacy of a princely legal system using gesture, the spoken word and ritual; it could do without writing for quite a long while.

The examination of preserved charters of the twelfth century confirms the thesis that in Poland, as everywhere else in Europe outside the ancient Roman *limes*, the Church was the first institution to understand the importance of putting into writing pious donations. The Church was also the first to try to safeguard its possessions by means of the written word.⁴² The role of the Cistercians cannot be underestimated. They were the first in Poland to have practised the writing down of gifts made to them. One has even talked of a Cistercian "strategy", different from that of the Benedictines who, for quite a long period, were satisfied with oral statements concerning donations.⁴³

³⁶ On the history of the foundations, see: A.M. WYRWA, "Rozprzestrzenianie się cystersów w Europie Zachodniej i na ziemiach polskich" [The spread of the Cistercians in Western Europe and Poland], in: *Cystersi w kulturze średniowiecznej Europy*, ed. J. STRZELCZYK (Poznań, 1992), pp. 43 ff.; M. STARNAWSKA, "Crusade orders on Polish lands during the Middle Ages", *Questiones Medii Aevi Novae* 2 (1997), pp. 121-142.

³⁷ *Repertorium*, Nos. 53, 55, 74, 87, 89, 124, 150.

³⁸ *Repertorium*, Nos. 62, 78, 115, 126.

³⁹ *Repertorium*, Nos. 88, 112, 113, 135, 145.

⁴⁰ *KDW* I, No. 9. Cf. B. KÜRBIS, "Najstarsze dokumenty opactwa benedyktynów w Mogilnie" [The earliest charters of the Benedictine abbey at Mogilno], *SZC* 13 (1968), p. 50.

⁴¹ *KDP* I, No. 5.

⁴² Cf. A. ADAMSKA, "The introduction of writing", p. 176; J. STEVENSON, "Literacy in Ireland: the evidence of the Patrick dossier in the Book of Armagh", in: *The Uses of Literacy*, pp. 13 ff. S. KELLY, "Anglo-Saxon lay society and the written word", *ibid.*, pp. 38 ff.

⁴³ K. SKUPIEŃSKI, *Funkcje małopolskich dokumentów w sprawach prywatnoprawnych do roku*

The general interest of the Church in written evidence was growing during the twelfth century, even if the development of the episcopal charter was relatively slow.⁴⁴ Based on the transmitted texts we might suppose that most monasteries kept a record of their properties (as simple *notitiae*). This record may often have been developed into *libri traditionum*. We have positive evidence for this form of memorization by writing, e.g. from the Benedictine monastery at Mogilno, and from that of the regular canons at Trzemeszno, in Great Poland.⁴⁵

The State and Pragmatic Literacy

The conclusion seems warranted that the function of pragmatic literacy was originally that of memorizing gifts of property rights, within the limits of private law, to the Church. Nevertheless, a reorganization of ducal powers in the broken-up duchies took place in the twelfth century, stimulating a growth in document use by the secular power. This occurred first in economic matters, in particular in the registration of gifts and immunities. Gradually this interest came to oppose the practice by which charters were drafted by the interested parties.⁴⁶ It enabled the organization of the first princely chanceries *sensu stricto* in the first half of the thirteenth century.⁴⁷

The acceleration in documentary production in the second half of the twelfth century was accompanied by an important development in public law, i.e. that of the idea of the *sigillum authenticum*. Because of this long-term development, at the end of the Middle Ages, in the fourteenth and fifteenth centu-

1306 [The functions of private charters in Lesser Poland until 1306] (Lublin, 1990), pp. 84 ff. The stimulus of the Cistercians has also been observed in studies of the use of Latin charters in twelfth-century Ireland, Scandinavia and Bohemia. See, e.g. FLANAGAN, "The context and uses of the Latin charters", p. 114; LARSSON, "Nordic digraphia and diglossia"; and the contribution of I. HLAVÁČEK to this volume.

⁴⁴ T. JUREK, "Das Polnische bischöfliche Urkundenwesen bis ca. 1300", in: *Die Diplomatie der Bischofsurkunde vor 1250—La diplomatie épiscopale avant 1250*, ed. Ch. HAIDACHER and W. KÖFLER (Innsbruck, 1995), pp. 149 ff.

⁴⁵ B. KÜRBIS, *Najstarsze dokumenty*, p. 33; J. DOBOSZ, "Podrobiony dokument Mieszka Starego dla kanoników regularnych z Trzemeszna (28 kwietnia 1145 roku)" [The forgery of Mieszko the Old for the Regular canons of Trzemeszno (28 April 1145)], in: *Gniezno: Studia i materiały historyczne*, 4 (Gniezno, 1994), p. 88. On this kind of records, see the contribution of A. HECHT to this volume.

⁴⁶ A. GIEYSZTOR, "Les chartes de franchises", p. 113.

⁴⁷ The thirteenth century also saw the fabrication of many spurious acts of eleventh-century rulers. These forgeries may be seen as a way of filling the gaps in the written record of the earlier period.

ries, only the seal of the monarch, that of his representative (*capitaneus*) and that of the local tribunals (*iudicia terrestria*) deemed to represent the ruler were accepted in public law.⁴⁸ The seals of ecclesiastical persons had the value of a *sigillum authenticum* only within canon law. In the twelfth century, however, the situation was far from clear, especially with reference to the seals of the archbishop of Gniezno and the local bishops. Various ducal charters were co-sealed by bishops, and vice versa. In the first documents drafted in the name of lay persons, the confirming authority may be either the ruler or a prelate. A good example is the foundation charter of the Cistercian monastery of Łekno, in Great Poland (1152/1153), issued by a *comes* Zbylut. The corroboration says that, in the presence of all *duces* governing the Polish lands at the time ("*Boleslao, Mesicone, Heinricho, fratribus germanis in Polonia principantibus*"), it was nevertheless the archbishop of Gniezno who appended his seal:

*acta sunt hec a Johanne, sancte Gnesnensis ecclesie venerabili archipresule cuius etiam sigilli impressione signate sunt hec littere.*⁴⁹

The first instance of a layman appending his seal dates from 1192. The exchange of possessions between the Cistercian monastery of Jędrzejów, in Little Poland, and a certain Niegostaw was confirmed not only by the bishop of Cracow and the local ruler, but also by the count palatine:

*sigillum Phulconis venerabilis Cracoviensis episcopi, hoc factum confirmantis; Sigillum reverendissimi ducis Kazimiri hoc approbantis et laudantis; sigillum Nicholai palatini comitis hoc ipsum testificantis.*⁵⁰

Despite the slow yet orderly growth of pragmatic literacy, Polish medievalists are rather sceptical about the use of writing in the daily government of the country before the end of the thirteenth century. They prudently suggest that part of the decisions made by the monarch might have been put into writing. However, their ephemeral character caused the destruction of these messages once they had outlived their usefulness.⁵¹

Meanwhile, although the use of writing in the internal life of the country must remain subject to discussion, the use of writing in international relations

⁴⁸ Cf. K. BOBOWSKI, "Umacnianie się prawnej roli pieczęci w XII i XIII w. (na przykładzie Pomorza Zachodniego)" [The enforcement of the juridical value of the seal in the twelfth and thirteenth centuries (exemplified by Western Pommerania)], *Czasopismo Prawno-Historyczne* 38 (1986), No. 2, pp. 23-39.

⁴⁹ *KDW* I, No. 18.

⁵⁰ *KDM* I, No. 3.

⁵¹ K. SKUPIEŃSKI, *Funkcje małopolskich dokumentów*, pp. 76-77.

is admitted without reserve. The chronicler called Gallus Anonymus has preserved testimony of a letter sent by prince Wladislas Hermann to the monks of St.-Gilles in Provence. It accompanied a pious donation made in the hope of obtaining offspring.⁵² There are twelfth-century indications of correspondence of Polish rulers and bishops with foreigners.⁵³ One of the best-known letters is that of Matthew, bishop of Cracow, to Bernard of Clairvaux (1143-1145).⁵⁴ Inviting St. Bernard to come to Poland and direct the Catholic mission against Orthodox Russia, the sender of the letter, who was most probably also its author, shows excellent knowledge not only of the *ars dictandi*, but also of the Bible and classical authors.⁵⁵ This knowledge characterizes the Cracow ecclesiastical milieu of the middle of the twelfth century.⁵⁶

There is also evidence of correspondence between members of the Piast dynasty. Apparently, during the civil wars at the beginning of the twelfth century between prince Boleslas Wrymouth and his elder brother Zbigniew, the latter communicated by writing with his partisans.⁵⁷ We ought, however, to take the use of writing to communicate within the borders of the country *cum grano salis*. What, one might ask, was the real function of such correspondence? Was the exchange of letters between two local rulers a game of prestige rather than a true exchange of information? Because the information was probably also and quite possibly primarily transmitted by word of mouth.

⁵² Gallus Anonymus, *Cronica*, I, 30, pp. 57 ff. The text of the letter "quoted" by the chronicler was doubtlessly invented by himself; this, however, does not mean an absence of real correspondence at the time.

⁵³ *Repertorium*, Nos. 13, 20, 23, 24, 133.

⁵⁴ The most recent edn. in: *Schlesisches Urkundenbuch*, I, 971-1216, ed. H. APPELT (Graz and Cologne, 1963), No. 11. See also: M. PLEZIA, "List biskupa Mateusza do św. Bernarda" [The letter of bishop Matthew to St. Bernard], in: *Prace z dziejów polski feudalnej ofiarowane Romanowi Grodeckiemu w 70 rocznicę urodzin* (Warsaw, 1960), pp. 123-140; KÜRBIS, "Cystersi", *passim*.

⁵⁵ The author quotes St. Paul (four times), *Acts* (twice), *Psalms* (twice), the *Gospel according to St. Matthew*, Ovid, *Trist.*, Horace, *Ars Poetica*, and Boethius, *Consol.* Cf. PLEZIA, "List biskupa Mateusza", pp. 129 ff.

⁵⁶ See K. OŻÓG, "Życie intelektualne w przedlokacyjnym Krakowie" [Intellectual life in Cracow before the *locatio* according to German law], in: *Kraków przedlokacyjny* (Cracow, 1987), pp. 104-142.

⁵⁷ Gallus Anonymus, *Chronica*, II, 37: "*Interim autem Zbigneui littere capte cum nuntiis sunt allate, quibus multe traditiones et insidie sunt prolate*" (ed. p. 107).

Pragmatic Orality and Pragmatic Literacy

One may wonder what limits were set on the use of written documents in early medieval Poland. The good old law,⁵⁸ which merely relied on the oral testimony of living witnesses, confronted writing, a technology that came from abroad in the company of a foreign tongue, Latin. In the charters there are several traces of this "tension between the old methods [of memorisation] and the new", as Michael Clanchy characterizes this type of situation.⁵⁹ In Polish practice—as in the Anglo-Saxon and Irish societies⁶⁰—charters were part of a judicial ritual that encompassed much more than the charters alone. Witness e.g. the ecclesiastical ceremony accompanying the ducal donation to the cathedral of Poznań, described in a charter of 1142. After noting that the offering will be put into writing,

*Boguchvalus bone memorie episcopus, accepta stola, ivit ante altare beati Petri, et excommunicavit omnes qui deberant illam villam auferre vel hominibus in villa manentibus in aliquo nocere; et omnes qui adfuerunt et qui audierunt, respondebunt amen.*⁶¹

Several decades later, at Płock in 1190, a *comes* had his will drawn up. It is the first will of a layman that has come down to us. In the corroboration we read that:

*Hec autem dicta et scripta sunt in ecclesia beate Marie ante ipsius altare, sub testimonio solius Dei et genitrici eius, dominique Johannis primi ibidem prepositi, facta ad eum confessione, et sacri corporis et sanguinis Christi de manu ipsius communione sumpta, dum ad bellum processit.*⁶²

The vitality of oral procedure⁶³ and the oral methods of memorization suggest that in earlier periods the role of living witnesses was much more important than that of written proof. This explains why the proclamation of judicial

⁵⁸ The expression is used by M.T. Clanchy (see M.T. CLANCHY, "Remembering the past and the good old law", *History* 55 (1970), pp. 166-172). See also K. KROESCHELL, *Deutsche Rechtsgeschichte 2 (1250-1650)* (Reinbek, 1973; Opladen, 1992⁸), pp. 253-255, on the German expression "das gute alte Recht".

⁵⁹ CLANCHY, *From Memory to Written Record*, p. 260.

⁶⁰ KELLY, "Anglo-Saxon lay society and the written word", pp. 43 ff.; FLANAGAN, "The context and uses of the Latin charters", p. 120.

⁶¹ *KDW* I, No. 8.

⁶² *KDP* I, No. 6.

⁶³ Observation of B. KÜRBIS, "Pisarze i czytelnicy w Polsce XII i XIII wieku" [Authors and readers in twelfth- and thirteenth-century Poland], in: *Polska dzielnicowa i zjednoczona*, ed. A. GIEYSZTOR (Warsaw, 1972), p. 164.

decisions and, consequently, of charters often took place during public ceremonies such as banquets and assemblies, the sacral and strictly political characters of these occasions being inseparable. There is much testimony that the founding of monasteries was often publicized during solemn banquets.⁶⁴ Similarly, the dates of several charters inform us that the judicial action was undertaken during an assembly ("*in colloquio*"), which naturally increased the number of potential witnesses.⁶⁵ Unfortunately we cannot say anything about the technical aspects of the charters' role in the ritual. The examination of the very few originals that have survived permits us to cautiously suggest a role for the charter similar to that which it played e.g. in Anglo-Saxon England. There it is thought that "the text of the charter was written out by or on behalf of the beneficiary before the ceremony or subsequent to it".⁶⁶ It seems as if in Poland a short notice (*notitia*) was written at the moment of the ceremonial judicial act. This notice could later be developed into a full-fledged charter with all the standard elements.⁶⁷

The Aristocracy and Pragmatic Literacy

The interest of the eleventh- and twelfth-century Polish Church in literacy is evident and proven. The interest of the State in written modes of communication may be presumed.⁶⁸ This attitude of the lay elites towards writing, however, has produced controversial judgements. On the one hand, as in the other countries of East Central Europe,⁶⁹ active participation in literacy started much later: in the middle of the fourteenth century they remained *illitterati*, in the

⁶⁴ This ritual lasted until the end of the thirteenth century. See, e.g. *Liber fundationis claustris Sanctae Mariae Virginis in Heinrichow*, ed. R. GRODECKI, 2nd edn. (Wrocław, 1991), pp. 112 and 116. On the symbolism of the banquet in the earlier Middle Ages in Poland, see: Cz. DEPTUŁA, *Galla Anonima mit genezy Polski* [The myth of the genesis of Poland according to Gallus Anonymus] (Lublin, 1990), pp. 238 ff. See also G. ALTHOFF, "Der frieden-, bündnis- und gemeinschaftsstiftende Charakter des Mahles im früheren Mittelalter", in: *Essen und Trinken in Mittelalter und Neuzeit*, ed. I. BITSCH a.o. (Sigmaringen, 1987), pp. 13-25.

⁶⁵ KDP III, No. 6; KDW I, No. 22; KDM I, No. 3.

⁶⁶ KELLY, "Anglo-Saxon lay society and the written word", p. 44.

⁶⁷ See, e.g. the foundation charter of the Premonstratensian monastery at Wrocław (1139-1149), composed of two parts, i.e. a *notitia* and a charter written doubtlessly on the basis of the *notitia* (ed. *Schlesisches Urkundenbuch*, 1, No. 19).

⁶⁸ See ADAMSKA, "The introduction", *passim*.

⁶⁹ See, e.g. E. FÜGEDI, "*Verba volant*: Oral culture and literacy among the medieval Hungarian nobility", in: ID., *Kings, Bishops, Nobles and Burghers in Medieval Hungary*, ed. J. BAK (Aldershot, 1986), Essay VI, pp. 1-25.

sense that they were unable to read Latin.⁷⁰ On the other hand, this does not necessarily mean that they were indifferent to writing then, or even in earlier periods. The contrary seems rather to be true.

It was the lay aristocratic milieu, that of the dignitaries of the princely courts, that prompted the first chronicle, or rather the *gesta* of the Piast dynasty, to be written by the pen of a foreigner, known as Gallus Anonymus.⁷¹ This work, meant for "patriotic" education and amusement alike, was followed by two other texts. They belong to the genre of the chivalrous *romance*, and were written in the 1150s or 1160s. One is the history of the rise and fall of Piotr Włostowic, a great Polish lord of the time.⁷² The other is a Polish adaptation of an epic well-known in the West, that of Walter (Waltharius) and his beloved Helgunda.⁷³ This story of passion, infidelity and revenge was written for the princely court of Wiślica, which by the second half of the twelfth century had become a centre of chivalrous culture.

Most probably these first literary works intended for a lay public were meant to be performed orally, during banquets. Gallus Anonymus himself states that:

*sicut vitas sanctorum et passiones religiosum est in ecclesiis predicare, ita gloriosum est in scolis vel in palatiis regum ac ducum triumphos vel victorias recitare.*⁷⁴

To turn to more mundane sources, one ought not to underestimate the importance of inscriptions as sources for the attitudes of the lay elites towards literacy. There are a series of inscriptions accompanying the graphic representations of pious donations from the second half of the twelfth century onwards.

⁷⁰ See J. BIENIAK, "'Litterati' świeccy w procesie warszawskim z 1339 roku" [Lay *litterati* during the trial of Warsaw of 1339], in: *Cultus et Cognitio* (Warsaw, 1976), pp. 97-106. Recently one has maintained that during the Middle Ages, reading and writing were, to the eyes of the lay elite, contrary to the chivalrous ideal (D. PIWOWARCZYK, *Obyczaj rycerski w Polsce późnośredniowiecznej (XIV-XV wiek)* [The ritual of chivalry in the Polish later Middle Ages (fourteenth and fifteenth centuries)] (Warsaw, 1998), pp. 54 ff.).

⁷¹ Cf. *supra*, note 29. A new edition with facing English translation is being prepared at the Central European University (Budapest), for the series *Central European Medieval Texts*.

⁷² *Cronica Petri Comitis Poloniae accedunt Carminis Mauri fragmenta*, ed. M. PLEZIA, in: *MPH* s.n. 3 (Cracow, 1951).

⁷³ The text has been transmitted in a chronicle of Great Poland, written in the second half of the thirteenth century (*Cronica Poloniae Maioris*, ed. B. KÜRBIS, in: *MPH* s.n. 8 (Warsaw, 1970), pp. 41-45). See G. LABUDA, *Źródła, sagi i legendy do najdawniejszych dziejów Polski* [Sources, sagas and legends for the earliest history of Poland] (Warsaw, 1960), pp. 245-298.

⁷⁴ Gallus Anonymus, *Cronica*, III, *Ep.*, ed. MALECZYŃSKI, p. 122.

These may be found on the tympanum of churches founded by rulers or by members of the growing aristocracy.⁷⁵

Pictorial images and writing have become equally instrumental in proclaiming the glory of the princely family of Kazimir the Just, represented on the plaster panel of Wiślica (1168-1177).⁷⁶ The image of the princely family, of high artistic quality, is accompanied by an inscription in verse, which now has been partially destroyed:

*Hi concvlari querunt vt in astra levari possint et pariter vefrsus celum capescere iter*⁷⁷

Another relevant monument is the stone column of Konin, halfway between Kruszwica and Kalisz, elevated by a lofty lord of Great Poland, Piotr Wszeborowic, in 1151. The inscription on the column proves the importance attached to writing as an instrument of political and social prestige:

*Anno ab incarnatione domini nostri M. C. L. primo,
In Calis hic medium de Cruspvici fere punctum,
Indicat ista vie formula iustitie
Quam fieri Petrus iussit comes hic palatinus
Hoc quoque solerter dimidiavit iter
Eius ut esse memor dignetur quisque viator
Cum prece propicium sollicitando deum.*⁷⁸

The existence of a modicum of pragmatic literacy among lay aristocrats of the earlier Middle Ages can be established when one acknowledges all available sources. This allows us to judge the attitude of laymen to writing differently from what has been customary in Polish medieval studies. The charters, although rare, when taken with the literary texts and inscriptions witness real

⁷⁵ The church of the Regular canons (Sanctae Mariae Virginis in Arena) at Wrocław; the church of the Benedictine abbey of St. Vincent at Wrocław; the church of St. Michael at Wrocław; the church of St. Anne at Strzelno. See B. Kürbis, "Inskrypcje (Polska)" [Inscriptions (Poland)], in: *Słownik Starożytności Słowiańskich*, ed. G. LABUDA a.o., 2 (Poznań, 1964), pp. 271-275.

⁷⁶ See A. ADAMSKA, "La piété lisible dans la parole et l'image" (in preparation for: *Reading Images and Texts: Medieval Images and Texts as Forms of Communication*, ed. M. HAGEMAN and M. MOSTERT (Turnhout, 2001: *Utrecht Studies in Medieval Literacy*)).

⁷⁷ After J. DOBOSZ, *Działalność fundacyjna Kazimierza Sprawiedliwego* [The foundations of prince Kazimir the Just] (Poznań, 1995), p. 57.

⁷⁸ After T. MICHAŁOWSKA, *Średniowiecze* [The Middle Ages] (Warsaw, 1995: *Wielka historia literatury polskiej* 1), p. 71.

understanding of the powers of writing. And not only writing's symbolic power,⁷⁹ but also the power of solemn written memorization.

From Memory to Written Record?

Our short analysis of all traces of pragmatic literacy in Poland, datable to the eleventh and twelfth centuries, shows its limited character. The use of writing in international contacts, correspondence, merely proves the familiarisation with standard forms developed in the West. The slowness in introducing documents as proof under Polish law is explained by the absence of a social demand for written proof.⁸⁰ It witnesses to the vitality and efficacy of ancient judicial procedures which ought not to be dismissed as primitive or backward.

It was only in the thirteenth century that profound changes in the economic system and in the social structure, prompted for a large part by the complex process of the external and internal colonization according to "German" law, decisively introduced practical literacy. After 1200, the numbers of documents preserved increase astonishingly to several hundreds per annum,⁸¹ and these numbers continue to grow every year. It is the thirteenth century that sees the development of the urban milieu that from then on accounted for much of pragmatic literacy. It is the same century that saw the establishment of princely and episcopal chanceries.⁸²

Apparently the twelfth century, and especially its second half, in a way prepared the "big jump" of the thirteenth century. The intensified use of writing, not only by Church and State, but also by the lay aristocracy, was inspired by several factors. Among these, contacts with abroad ought not to be underestimated, not least of which contacts with the papacy. Papal diplomas issued for Polish ecclesiastical institutions⁸³ provided "living" models of the *ars dictandi*, which could be imitated and emulated. Several visits by papal emissaries (in 1103-1104, 1123-1125, 1149-1150 and 1168-1185) had provided practical examples of how to deal with written evidence.

⁷⁹ Cf. the expression used by H.-J. MARTIN, *Histoire et pouvoirs de l'écrit* (Paris, 1988).

⁸⁰ SUŁKOWSKA-KURAŚ, "La typologie des actes royaux polonais avant 1200", p. 254.

⁸¹ Cf. the collections of edited charters listed in ADAMSKA, "Bibliographie de la diplomatie polonaise", pp. 281-288.

⁸² See K. MAŁECZYŃSKI a.o., *Dyplomatyka wieków średnich* [Medieval diplomacy] (Warsaw, 1975); E. POTKOWSKI, *Książka rękopiśmienna w kulturze Polski średniowiecznej* [The manuscript book in medieval Polish culture] (Warsaw, 1984).

⁸³ See *Bullarium Poloniae*, 1: 1000-1342, ed. I. SUŁKOWSKA-KURAŚ and S. KURAŚ (Rome, 1982).

When, then, can one date the birth-throes of the literate mentality in medieval Poland which is at the centre of Michael Clanchy's model study?⁸⁴ It seems that, as is the case for everywhere North of the Alps, one ought to speak of a process rather than of a moment of birth. This process, which for some social groups—in Poland as elsewhere in Europe—was to last at least till the fifteenth century, still needs serious investigation. What seems clear from a comparison between England and Poland in the period 1000-1200 is that Poland had less in common with the Norman kingdom than with other countries in the periphery of Latin Christianity. A study of the genesis of literate behaviour in Poland will benefit not only from comparisons with other countries in East Central Europe, but also from comparisons with the countries in the other peripheries of Latin Europe.

⁸⁴ CLANCHY, *From Memory to Written Record*, p. 186.

Goatskin and Growing Literacy: The Penetration of Writing in the Former Counties of Holland and Zeeland in the Thirteenth Century in Relation to the Changes of the Internal and External Features of the Charters Issued¹

EEF DIJKHOF

In 1950 the Royal Netherlands Academy of Arts and Sciences took the initiative for a full text edition of all charters concerning the former county of Holland and Zeeland in the Netherlands as from the end of the seventh century up to the end of the thirteenth century. To date, four volumes have been published with a total of approximately 2,500 charters. The first volume was edited by the late A.C.F. Koch in 1970, the other three volumes by J.G. Kruisheer between 1986 and 1997.² The edition of a fifth volume, which will contain about 750 charters dating from the last decade of the thirteenth century, is still in progress. This edition consists not only of charters issued or received by persons or institutions in this region, but also of all such documents mentioning persons, institutions or places in this county.

For a correct interpretation of these charters, information about the genesis of the documents is needed. An ideal edition should indicate for every charter

¹ This article is an annotated version of the lecture given on 29 April 1999 at the University of Utrecht. I take the opportunity to thank all the participants in the discussion for broadening and sharpening my view in many respects.

² *Oorkondenboek van Holland en Zeeland tot 1299*, I, *eind van de 7e eeuw tot 1222*, ed. by A.C.F. KOCH; II, *1222 tot 1256*, III, *1256 tot 1278*, and IV, *1278 tot 1291*, ed. J.G. KRUISHEER ('s-Gravenhage, Assen and Maastricht, 1970-1997).

where it was drafted and where it was written. In order to achieve this ideal situation to at least some extent, investigations have been made into the genesis of the charters along with the progress of the edition. I will give some examples. In 1971 Kruisheer started with a study of the charters and the chancery of the counts of Holland and Zeeland from their beginnings at the end of the tenth century up to the end of the thirteenth century.³ In 1993 J.W.J. Burgers published an over-all study of the palaeography of this county during the thirteenth century. In addition to employing a new palaeographic method, he identified and described 66 scribes from this region.⁴ In 1997 my thesis dealt with the charters of the most important towns and monasteries in the thirteenth and the first quarter of the fourteenth centuries.⁵ At present we are focusing on the writing activities among the nobility in the countryside.⁶ Although the project was not intended as such, it eventually turned into a program in which the writing activities of all layers of society mentioned in those charters are being or will be investigated.

The results of these investigations, however, can also be applied to other realms of history, for instance to studies of the growth of literacy in this county. We now have complete knowledge of all the charters that have come down to us. For many charters it has been determined where they were drafted and written. We know where and when writing activities emerged: in the monasteries, in the towns, in the circle of the count and in that of the members of the nobil-

³ J.G. KRUISHEER, *De oorkonden en de kanselarij van de graven van Holland tot 1299*, 2 vols. ('s-Gravenhage and Haarlem, 1971: *Hollandse Studiën* 2; the publication of a PhD thesis, University of Amsterdam).

⁴ J.W.J. BURGERS, *De paleografie van de documentaire bronnen in Holland en Zeeland in de dertiende eeuw* (Leuven, 1995: *Schrift en schriftdraggers in de Nederlanden in de middeleeuwen: Paleografie, codicologie, diplomatiek* 1), previously published as a PhD thesis (University of Amsterdam, 1993), with different pagination.

⁵ E.C. DIJKHOF, *Het oorkondenwezen van enige kloosters en steden in Holland en Zeeland 1200-1325* (PhD thesis, University of Amsterdam, 1997), consisting of investigations into the charters of the towns of Middelburg, Dordrecht, Delft and Haarlem, of the abbeys of St. Mary at Middelburg and St. Adalbert at Egmond, of the monastery of Koningsveld near Delft and of the monasteries of the friars minor in the towns of Middelburg and Dordrecht. A commercial edition with quite probably different pagination is in progress; for this reason the references to this study mention chapters and paragraphs only.

⁶ H. VAN ENGEN, "De registers van Gerard van Voorne. Over het ontstaan van het register Voorne A.B.", in: *Datum et actum: Opstellen aangeboden aan Jaap KRUISHEER ter gelegenheid van zijn vijfenzestigste verjaardag*, ed. D.P. BLOK a.o. (Amsterdam, 1998: *Publicaties van het Meertens Instituut* 29); E.C. DIJKHOF, "De verschriftelijking in Zeeland: De doordringing van het ambtelijk schriftgebruik in de omgeving van de stadsbesturen en de ambachtsheren in de dertiende eeuw", *Zeeland: Tijdschrift van het Koninklijk Zeeuwsch Genootschap der Wetenschappen* 9.1 (2000), pp. 2-9.

ity. We know the changes that took place, where they took place, at what time, in what context and how.

The second half of the thirteenth century brought extremely rapid growth in the number of charters issued.⁷ But rather than in the number of these charters, the process of growing literacy can be seen in the growing number of persons and institutions who were involved, as issuers, addressees, recipients or sealers, and to an even greater extent in the fact that during that century more layers of society became involved. In the third place we can see the growing diversity of the acts that were laid down in writing.

Investigations of the diplomatic of the charters concerning the county of Holland and Zeeland demonstrate growing literacy in many aspects. In this article I will focus on two of these. In the first place, the penetration of writing can be seen in the spread of places where charters were drafted and written. I will therefore sketch the outlines of this development.⁸ In the second place, I will devote attention to the changes that occurred in the internal and external features of the charters issued during the thirteenth century. I will explore the question of whether these indicate a changing role for writing in society.

In the twelfth century there were writing activities only in the abbeys of Egmond and Middelburg. During the thirteenth century writing activities remained manifest in both of these abbeys while the production of charters is also found in almost all other monasteries. The bulk of the production in all these writing centres was done on behalf of the monasteries themselves.⁹ Only in the abbeys of Middelburg and Egmond did their members do some writing on behalf of others. In the abbey of Middelburg some charters were drafted and written for the inhabitants of the town of Middelburg.¹⁰ The abbey of Egmond

⁷ The increase in the number of charters issued in the thirteenth century concerning the counties of Holland and Zeeland can be clearly seen in the ongoing edition of the *Oorkondenboek van Holland en Zeeland*. The first volume contains 174 charters from the beginning of the thirteenth century up to 1222; the second volume 661 charters for the period 1222-1256; the third volume 741 charters for the years 1256-1278; the fourth volume 748 charters from 1278 to 1291; and the fifth volume will give an edition of approximately 750 charters from 1291 till the end of 1299.

⁸ For a comprehensive survey of the growth of literacy in the county of Holland and Zeeland, see J.W.J. BURGERS, E.C. DIJKHOF and J.G. KRUISHEER, "De doordringing van het schrift in de samenleving in Holland en Zeeland tijdens graaf Floris V", in: *Wi Florens... De Hollandse graaf Floris V in de samenleving van de dertiende eeuw*, ed. D.E.H. DE BOER a.o. (Utrecht, 1996), pp. 191-211.

⁹ BURGERS, *Paleografie documentaire bronnen*, pp. 462-472; DIJKHOF, *Oorkondenwezen kloosters en steden*, ch. II, par. 5 b; ch. V, par. 5; ch. VII, par. 5.

¹⁰ BURGERS, *Paleografie documentaire bronnen*, pp. 467-469; Dijkhof, *Oorkondenwezen kloosters en steden*, ch. II, par. 5 b 2.

had great influence on writing in the county, while up to the eighties of the thirteenth century their members did the writing on behalf of the count.¹¹

The writing activities in the circle of the count clearly indicate that growing literacy was not a linear development.¹² As early as the beginning of the thirteenth century Count Dirk VII had formed a chancery staffed by two clerks recruited from the abbey of Egmond. This chancery remained in existence under his successor up to his death in 1222. Thereafter no writing activities were attested in the circle of the counts for almost three decades. The charters issued by them were made by the clerks of the recipients or by unknown scribes. The election of Count William II as king of the Romans caused him to set up a chancery. He soon appointed an experienced clerk from the chancery of his predecessor Henry, the son of the emperor Frederick II.¹³ Subsequently a well-organized chancery came into being in which several scribes were active. Following the sudden death of the king of the Romans in January 1256, his brother, who was tutor to the minor, Count Floris V, continued a chancery of his own. But after his death in 1258, once again a period of several years followed during which there was no chancery. Count Floris V, whose accession was in 1266, soon appointed a clerk. But until 1280 this chancery consisted of only one member, once again a monk of the abbey of Egmond. After the death or the resignation of this clerk, the count's chancery grew to maturity and became staffed by several clerks. However, this was not a strictly hierarchical institution, working according to specified rules. It remained a loosely knit organization until its reform in the years 1316-1318.¹⁴ Nevertheless, in this shape it survived the disasters that struck the county in the nineties of the thirteenth century: the murder of Count Floris V in June 1296, the vacuum of power which followed due to the absence of the new count, John I, and the death in November 1299 of that count without male heirs, which led to a new

¹¹ BURGERS, *Paleografie documentaire bronnen*, pp. 464-466; DIJKHOF, *Oorkondenwezen kloosters en steden*, ch. VII, par. 5; see also E.C. DIJKHOF, "De relatie tussen de grafelijke kanselarij en het Egmondse scriptorium gedurende de dertiende eeuw", *Egmondse Studiën* 4 (forthcoming).

¹² This impression of the developments of the count's chancery in the thirteenth century is based on KRUISHEER, *Oorkonden en kanselarij*, and BURGERS, *Paleografie documentaire bronnen*, pp. 443-462. See also DIJKHOF, "Grafelijke kanselarij en het Egmondse scriptorium".

¹³ D. HÄGERMANN, *Studien zum Urkundenwesen Wilhelms von Holland: Ein Beitrag zur Geschichte der deutschen Königsurkunde im 13. Jahrhundert* (Cologne and Vienna, 1977: *AfD*, Beiheft 2), p. 41.

¹⁴ J.G. KRUISHEER, "De registers van Pieter van Leiden: het papieren cartularium van de grafen van Holland (1299) en het begin van de systematische registratie ter kanselarij (1316)", *Nederlands Archiefblad* 72 (1968), pp. 28-110.

dynasty in the county when he was succeeded by his nephew, Count John of Hainaut.

Let us now take a look at the writing activities in the towns.¹⁵ At a very early stage the townsmen were already taking part in the drafting of their own by-laws and regulations. In Middelburg and probably also in Leiden this phenomenon occurred as early as the end of the twelfth century, in some other towns at some point in the first half of the thirteenth century.¹⁶ The writing of a charter containing these laws, however, was still left to a scribe from elsewhere. It was for this reason that the inhabitants of Haarlem asked a monk from the abbey of Egmond, which was not too far away, to do the writing for them in 1245.¹⁷

From the sixties of the thirteenth century on, in some cases the townsmen made use of a local scribe to produce some writing for them. For instance, the

¹⁵ For a comprehensive survey, see Eef DIJKHOF, "The growing literacy in the towns of the county of Holland and Zeeland", in: *La diplomatie urbaine en Europe au moyen âge: Actes du congrès de la Commission internationale de Diplomatie, Gand, 25-29 août 1998*, ed. W. PREVENIER and Th. DE HEMPTINNE (forthcoming), pp. 129-138.

¹⁶ For the towns in Zeeland, see J. KRUISHEER, "Het ontstaan van de oudste Zeeuwse stadsrechtsoorkonden", in: *Ad fontes: Opstellen aangeboden aan prof. dr. C. VAN DE KIEFT ter gelegenheid van zijn afscheid als hoogleraar in de middeleeuwse geschiedenis aan de Universiteit van Amsterdam*, ed. C. CAPPON a.o. (Amsterdam, 1984), pp. 275-304; for towns in Holland, see J. KRUISHEER, *Het ontstaan van de stadsrechtsoorkonden van Haarlem, Delft en Alkmaar* (Amsterdam, Oxford and New York, 1985: *Verhandelingen der Koninklijke Nederlandse Akademie van Wetenschappen, Afd. Letterkunde, Nieuwe Reeks* 130), J. KRUISHEER, "Het ontstaan van de oudste Leidse stadsrechtsoorkonden (waarschijnlijk einde twaalfde eeuw-1266)", in: *Feestbundel aangeboden aan prof. dr. D.P. BLOK ter gelegenheid van zijn 65ste verjaardag en zijn afscheid als hoogleraar in de nederzettingsgeschiedenis in verband met de plaatsnaamkunde aan de Universiteit van Amsterdam*, ed. J.B. BERNIS a.o. (Hilversum, 1990), pp. 182-203, and J.G. KRUISHEER, "De tijd van ontstaan van het oudste Goudse stadsrecht en van Gouda als stedelijke nederzetting", *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden* 108 (1993), pp. 13-19. A general survey can be found in: J. KRUISHEER, "Stadsrechtbeoorkonding en stedelijke ontwikkeling", in: *De Hollandse stad in de dertiende eeuw*, ed. E.H.P. CORDFUNKE a.o. (Zutphen, 1988), pp. 44-54. For an updated version of the study on the town's privilege of Delft, see J. KRUISHEER, "De totstandkoming van de Delftse stadskeur van 1246", in: C.G.M. VAN KRUINING a.o., *Delft, 15 april 1246* (Delft, 1996), pp. 45-56; and for Haarlem, see J. KRUISHEER, "De totstandkoming van de Haarlemse stadskeur van 1245", *Haarlem Jaarboek: Uitgave Historische Vereniging "Haarlem"* (Haarlem, 1995), pp. 9-22.

¹⁷ BURGERS, *Paleografie documentaire bronnen*, p. 465; DIJKHOF, *Oorkondenwezen steden en kloosters*, ch. VI, par. 3 a and 4 a; KRUISHEER, "Totstandkoming Haarlemse stadskeur". The town's privilege of Middelburg was written by a member of the abbey of St. Mary in Middelburg (BURGERS, *o.c.*, pp. 184-188; DIJKHOF, *o.c.*, ch. II, par. 3 a); that of the town of Delft was probably written by the chaplain of Richarda, the sister of count William II of Holland, who lived in Delft (BURGERS, *o.c.*, pp. 61-64; DIJKHOF, *o.c.*, ch. IV, par. 3 a and 4 a; and KRUISHEER, "Totstandkoming Delftse stadskeur").

priest of the main church of Dordrecht wrote some charters at the request of the citizens.¹⁸ Only thereafter, as of the end of the seventies, did clerical offices come into being. Their creation coincided with the rise of charters issued in the name of two or more aldermen, confirmed with their personal seals. In these aldermen's charters all sorts of acts made by private persons were established in writing. Dordrecht, which appointed a clerk at least in 1277, led the way; Haarlem, Delft, Leiden and Zierikzee followed suit some years later.¹⁹ In all of these towns the production of the clerk's offices consisted almost completely of charters issued and sealed by individual aldermen.

In addition to the clerk's offices, the use of writing also grew in these urban societies. Institutions within the town's walls and even some individuals employed their own clerks. At the end of the thirteenth century it is mentioned that several towns had schoolmasters. Haarlem had a schoolmaster at least as of 1302: one called Gerard, who held a lower ecclesiastical judicial office as well, and who headed a small secretariat in that position.²⁰ In Dordrecht in the nineties, one of the aldermen wrote accounts, charters and regulations, using the vernacular as well as Latin.²¹ At the same time, the brothers William and Giso Duking, two wealthy wine merchants from Dordrecht, employed their own clerks.²²

Regarding the penetration of writing into the countryside, we are confronted with the difficulty of a lack of sufficient sources. According to the names mentioned in the aldermen's charters, it seems highly probable that the gentry made use of the secretaries of the towns in the neighbourhood.²³ When describ-

¹⁸ DIJKHOF, *Oorkondenwezen steden en kloosters*, ch. III, par. 4 a.

¹⁹ DIJKHOF, *Oorkondenwezen steden en kloosters*, ch. III, par. 5 a (concerning Dordrecht), ch. IV, par. 5 (concerning Delft) and ch. VI, par. 5 a (concerning Haarlem). The writing activities in the town of Zierikzee have not been studied in detail. For the first clerk working there (between 1293 and 1306), see BURGERS, *Paleografie documentaire bronnen*, pp. 270-273. In the town of Leiden, the first clerk in the service of the town's magistrate is attested for the years 1292-1305; see BURGERS, *o.c.*, pp. 268-270, and E.T. VAN DER VLIST, *De oudste oorkonden van de stad Leiden: Een paleografisch-diplomatische studie* (Leiden, 1988: typescript), p. 21; Van der Vlist is working on a study on the growth of literacy in the town of Leiden (from the beginnings of literacy in the thirteenth century up to 1450).

²⁰ DIJKHOF, *Oorkondenwezen steden en kloosters*, ch. VI, par. 5 b.

²¹ BURGERS, *Paleografie documentaire bronnen*, pp. 242-245; DIJKHOF, *Oorkondenwezen steden en kloosters*, ch. III, par. 3 a; for his work on the financial accounts of the town of Dordrecht, which have been preserved partially for the years 1283-1287, see J.W.J. BURGERS and E.C. DIJKHOF, *De oudste stadsrekeningen van Dordrecht, 1283-1287* (Hilversum, 1995: *Apparaat voor de geschiedenis van Holland* 11), pp. XLIV-XLVI.

²² BURGERS, *Paleografie documentaire bronnen*, pp. 245-248, 263-266; DIJKHOF, *Oorkondenwezen steden en kloosters*, ch. III, par. 3 a.

²³ Cf. the circumstances in the town of 's-Hertogenbosch and the surrounding countryside in:

ing the writing activities of the higher nobility, we must distinguish between the southern part of the county, Zeeland, and the northern part, Holland. During the first half of the thirteenth century in the countryside of Zeeland, juridical districts came into being of which the parish church formed the centre.²⁴ Some juridical procedures had already been written down, most probably by parish priests, who in most cases were appointed by the local lords.²⁵ For the writing activities of the nobility in Holland, there is not much evidence. In his palaeographic study, Burgers mentions only two writers in the environment of a noble family.²⁶ Taking into account the range of charters issued by these noblemen, there must have been more activities than we can see by studying the charters preserved in originals.²⁷

The developments discussed above show the penetration of writing in different layers of society: the monasteries, the count, the nobility in the countryside, the municipal communities and, some time later, the townsmen themselves and the gentry in the neighbourhood of the towns. Counting charters, issuers and recipients seems to give the same results. But there is more. Research shows that the various persons and institutions mentioned for the first time in this growing number of charters did not play a passive role. For instance: the municipal communities took the initiative to have their own by-laws and regulations written down in charters sealed by the count. Only a few decades later they set up their own secretaries. And, maybe the most striking point, there seems no pressure from above like Michael Clanchy shows was probably the case in England.²⁸ We already pointed out the absence of a count's chancery during several periods in the thirteenth century and the small scale and simple organization of that chancery. The monasteries also seem to play a

G.A.M. VAN SYNGHEL, "Urban diplomatics in the Northern Low Countries", in: *La diplomatie urbaine en Europe au moyen âge*, pp. 521-532.

²⁴ C. DEKKER, *Zuid-Beveland: De historische geografie en de instellingen van een Zeeuws eiland in de middeleeuwen* (originally PhD thesis, University of Amsterdam; published Assen, 1971; 2nd edn. Krabbedijke, 1982), pp. 362-424.

²⁵ DIJKHOF, "Verschriftelijking in Zeeland". See also BURGERS, *Paleografie documentaire bronnen*, pp. 297-301, about the style of writing in Zeeland.

²⁶ BURGERS, *Paleografie documentaire bronnen*, pp. 219-221 (Teilingen), 239-240 (Wateringen); the other scribes in the circle of noblemen are either lords from Zeeland (Maalstede and Borsele) or clerks working for Aleid (the Dutch form of Alice), the sister of Count William II of Holland, who acted for some years as custodian of Count Floris V until he came of age.

²⁷ E.g., BURGERS, DIJKHOF and KRUISHEER, *Doordringing schrift*, p. 201, mention that the lord of Brederode, according to a charter of 5 May 1283, could rely on his own archives, in which he kept his charters as well as some registers.

²⁸ M.T. CLANCHY, *From Memory to Written Record: England 1066-1307*, 2nd edn. (Oxford and Cambridge, Mass., 1993) pp. 74-78.

minor role. The production of charters in the monasteries lagged far behind the numbers of charters produced in other kinds of writing centres. Thus it would seem that the inhabitants of the towns and probably the nobility, especially those in Zeeland, played a preponderant role in the penetration of writing in the county.

Research also produced information about developments in the format and shape of the charters. During the thirteenth century, almost all internal and external features underwent profound changes. I will mention the most striking developments. The script became more and more cursive. The use of the *literae elongatae* disappeared. From the forties of that century onward, the use of goat parchment came to prevail over calfskin. Tags were no longer of silk; most of them were made of parchment while a growing number of charters were authenticated with dependent seals. The layout also changed. The margins on the left and the upper side broadened.²⁹ Furthermore, especially in towns and monasteries, there was an increase in the number of seals used. In the middle of the thirteenth century, for instance, the inhabitants of Dordrecht were using only one seal for all occasions; at the turn of the fourteenth century their community was applying a great seal, a secret seal and a seal *ad causas*, while every alderman used his own personal seal.³⁰ There were also changes in the internal structure of the charters, which was simplified. The invocation at the beginning of the text disappeared, as did the *apprecatio* at the end. In most of the charters the vernacular replaced the use of Latin. Most of the texts show very short sentences, especially in the corroboration clause. The method of dating the charter shifted from just mentioning the year of issue to revealing the year and the month, and later in the century to specifying the day, in most cases according to the ecclesiastical calendar.³¹

We may distinguish four phases in this process of change. In the first one, all charters were treated the same. They were produced with a high level of what we might call diplomatic decorum. In this first phase the charters were carefully written in Latin, on well-prepared calfskin, with seals on silken tags,

²⁹ See, for the changes in the external features of the charters: BURGERS, *Paleografie documentaire bronnen*, pp. 320-322, 326, 338-340; DIJKHOF, *Oorkondenwezen steden en kloosters*, ch. VII, par. 3.

³⁰ DIJKHOF, *Oorkondenwezen steden en kloosters*, ch. VII, par. 3 g, and, esp. for Dordrecht, ch. III, par. 3 b 1.

³¹ The changes in the internal features of charters in the towns and monasteries are treated in: DIJKHOF, *Oorkondenwezen steden en kloosters*, ch. VII, par. 4. For developments in the count's chancery, see KRUISHEER, *Oorkonden en kanselarij*, pp. 67-108. For the emergence of the vernacular in these regions, see also: J.W.J. BURGERS, "De invoering van het Nederlands in de dertiende-eeuwse documentaire bronnen in Holland en Zeeland", *Tijdschrift voor Nederlandse Taal- en Letterkunde* 112 (1996), pp. 129-150.

with a generous structure, and sometimes decorated with *literae elongatae*. In the second phase we can distinguish between charters for “eternity” and those of minor importance. The latter were treated less carefully. In the third phase the diplomatic decorum of all charters seems to disappear, which is evident in clumsy writing and sometimes in a bad layout and grammatical errors.³² In the fourth phase a new balance was found. All the charters were once again treated alike. They were written in a highly cursive script with the regular use of capitals, which were sometimes modestly decorated. They were mostly written on goatskin, in the vernacular and with a plain structure, and were dated according to the ecclesiastical calendar. In this phase most writing centres were drafting and writing charters according to certain fixed rules.³³

The first phase mentioned above is evident only in the old writing centres in the county of Holland and Zeeland: the abbeys of Egmond and Middelburg and the count’s chancery at the beginning of the thirteenth century. The other phases can be identified in almost all writing centres in the county. There are some differences between them. In the monasteries the process of change seems to have taken a longer time than in the other writing centres. In the southern part of the county, changes took place earlier than in the northern part.³⁴

All these changes indicate in one way or another the growing use of written documents. The question that arises is whether these changes are simply the product of technical innovations caused by a growing pressure on the clerks, which was created by the growing demand for charters. In other words, are these merely an indication of the growing professionalization of the clerks? Or did some of them originate from the demands of the growing numbers of persons and institutions for whom these charters were written? And, in the latter

³² We must emphasize here that clumsiness of writing is clearly evident in the shape of the letters, and that this has nothing to do with our esthetical appreciation of medieval handwriting.

³³ Esp. the charters issued by the aldermen of the towns show a severe and enduring uniformity from the 1280s onwards. See DIJKHOF, *Oorkondenwezen steden en kloosters*, ch. II, par. 4 a I and 4 c I (Middelburg), ch. III, par. 4 a (Dordrecht), ch. V, par 4 a (Delft) and ch. VI, par 4 a (Haarlem).

³⁴ This process can be followed clearly through the emergence of the vernacular. In the town of Middelburg and in the countryside of Zeeland, already at the beginning of the thirteenth century legislative documents are written in Dutch; since the 1240s charters are written in the vernacular. In towns further North, charters in the Dutch language are attested later (Dordrecht 1277, Delft 1267, Haarlem 1290, Leiden 1293), while the count’s chancery is applying the vernacular from the early 1280s onwards. In the abbey of Middelburg, the shift from Latin to Dutch takes place from 1291 onwards; in the monastery of Koningsveld near Delft from 1297 onwards; and in the abbey of Egmond, in the North, from 1303 onwards. See DIJKHOF, *Oorkondenwezen kloosters en steden*, ch. VII, par. 4 a. Cf. also BURGERS, “Invoering van het Nederlands”.

case, what was the purpose of these changes? Do they give us a glimpse of a changing attitude towards written documents?

For T.A.M. Bishop, who was followed by Clanchy on this point, the emergence of the cursive script stemmed from the necessity of the clerks to write faster, which was required by the growing use of writing.³⁵ I agree with them on that point. The period of clumsy writing I mentioned before seems to be in keeping with this hypothesis. It shows a period in which writers were being forced to write faster, but were not yet experienced enough. Even the fact that this phase was so much shorter in the writing centres in the towns, where most of the writing was done, than in the monasteries, where the production was considerably lower, supports the hypothesis. In the beginning only experienced writers were able to write in that way. And this brings us to another aspect of cursive script: maybe charters in cursive style were soon trusted more because they appeared to be the work of an experienced clerk. In addition, a charter in that kind of script took a shorter time to write, so it was cheaper to produce.

Speaking in terms of cheaper production brings us to some other changes in the external and internal features of the charters. Tags of parchment were probably less expensive than silken ones. Smaller seals reduced the cost of sealing wax. A shorter text without several clauses that had no direct function—such as invocation and preamble—and with some very short and fixed formulae would lower the costs as well. The use of the cheaper goatskin will have had the same effect.

But cheapness might not be the only reason, and probably not the main reason for the growing use of goat parchment. In England sheepskin was in use, according to the *Dialogue of the Exchequer* quoted by Clanchy, because it was hard to make an invisible erasure on that kind of parchment,³⁶ probably because it is much thinner than calfskin. We may assume that goatskin, which is regularly as thin as sheep parchment, had the same advantage. Thus the use of goat parchment increased the trust one might have in a charter. In many other fea-

³⁵ T.A.M. BISHOP, *Scriptores Regis: Facsimiles to Identify and Illustrate the Hands of Royal Scribes in Original charters of Henry I, Stephen, and Henry II* (Oxford, 1961), p. 13; CLANCHY, *From Memory to Written Record*, pp. 128-129.

³⁶ CLANCHY, *From Memory to Written Record*, p. 121. The remark that it is impossible to determine what species of animal skin was being used, needs correction. A recent visit to the Public Record Office in London, showed that of all the patent, close and Gascon rolls I examined (*Chancery* (= C) 54/111, 54/114, 61/21, 66/114, 66/115 and 66/117, all dating from the last decade of the thirteenth century) the hair implantation of most membranes is still visible. In all cases sheepskin was being used as writing material. Of most of the charters issued by king Edward I deposited in the *Special Collection* (= SC 1), the reverse is covered with Japanese paper. In those cases where the reverse of the charter can be properly examined (e.g. SC 1/13/82 and SC 1/13/83), the parchment was made of sheepskin.

tures the aspect of manufacturing a charter that was trustworthy seems to have played a role. Noteworthy in this respect is the emerging habit of cutting, after the writing was done, the right edge of the document in such a manner that the edge followed the unequal ends of the lines, of filling up the last line of the text by points and other signs, of folding of the *plica* so that it covered a small part of the last line, or cutting the tags in cases of dependent sealing in such a way that there was no lower margin, and, lastly, the emergence of sentences in which words written between the lines were approved: *superscriptiones approbamus; datum ut supra*.

Maybe trust played a role in the emergence of the use of the vernacular as well. This seems to suggest that there was a direct relation between the growth of literacy and the emergence of charters written in medieval Dutch or Old French. This seems to be the case in the county of Holland and Zeeland in the third quarter of the thirteenth century. But the sources from other regions show us that some other factors probably played an important role.³⁷ This article, however, is not the appropriate place for discussing these matters.

This leads us to the central questions: Why did those changes actually take place? What was the impetus behind all those changes? And a strongly related question: did the changes which occurred demonstrate a changing attitude towards written documents?

The changes in decorum show that issuing a charter had become quite ordinary. In a world where orality prevailed and writing was exceptional, it seems appropriate to open the text of a charter with an invocation of God or the Holy Trinity and to conclude it with an *apprecatio*, and to give in the preamble a justification of the writing in which, for instance, the weakness of human memory was revealed. But in a world where written documents had become common, such a preamble was superfluous.

What emerged at the end of the thirteenth century in the county of Holland and Zeeland was a new kind of charter: simple and functional, with enough diplomatic decorum to be used as proof, controllable and understandable for those with a little or no knowledge of reading, inexpensive to produce and, above all, trustworthy.

The developments sketched above could hardly have taken place if there was no demand for them. A writer does not change his writing style unless he is urged to do so. Thus the changes that took place in the internal and external features of the charters cannot be explained by technical innovations only, and

³⁷ E.g., in the town of 's-Hertogenbosch, aldermen's charters were issued in Latin up to the middle the sixteenth century (see *Het Bosch' protocol, een praktische handleiding*, compiled by G.M. VAN SYNGHEL ('s-Hertogenbosch, 1993: *Werken met Brabantse bronnen* 2), p. 10.

cannot be seen as the work of the clerks alone. Clerks had to produce documents that might be used as proof. It seems to me very unlikely that they would have changed the format of the charters so profoundly without the acceptance of the issuers and the recipients.

This brings us back to the question of what gave the impetus to the growth in the numbers of charters issued, to the penetration of writing activities in the different layers of society and to the changes in the form of the charters. As far as the county of Holland and Zeeland is concerned, all the investigations seem to point in the same direction. I have already mentioned the preponderant role of the towns in this growth of literacy. There the scribes, the issuers and the recipients profited from the new form of charters that were issued. There was a lot of work for the clerks to do; the charters show the increase in the power and the position of the aldermen who were issuing these authenticated documents, and furthermore this process delivered to the recipient a document that could be trusted. It is precisely this last element that clearly indicates that the attitude towards written evidence had changed. For these recipients, the charter issued was not just a ritual or an obligation. If that were the case the trustworthiness of the document would have been of no importance to them. On the contrary: the fact that so much attention was paid to making a reliable document shows us that documentary proof was becoming more and more accepted and used.

The Writing of Charters in Scotland and Ireland in the Twelfth Century¹

DAUVIT BROWN

There are no surviving Latin charters for beneficiaries in Scotland or Ireland before the twelfth century.² The earliest are from the decade 1114-1124 in the name of either Alexander I of Scotland (1107-1124) or his brother, David.³ About 750 Scottish royal charter texts survive from the twelfth century;⁴ there are 204 charters of David I (1124-1153) and his grandsons, Mael

¹ I use “writing” here as the nearest English equivalent for German *Schriftlichkeit*: all facets of the writing of charters, not just the composition of text. “Scotland” is used here in its modern sense purely for convenience; this is anachronistic before the thirteenth century (see D. BROWN, “Defining Scotland and the Scots before the Wars of Independence”, in: *Image and Identity: The Making and Re-making of Scotland Through the Ages*, ed. D. BROWN a.o. (Edinburgh, 1998), pp. 4-17). I would like to thank Prof. David Bates for commenting on an earlier version of this paper, and Dr. Nerys Ann Jones for her constant support.

² The beneficiary of the earliest Scottish royal charters (in the 1090s) was Durham. See now A.A.M. DUNCAN, “Yes, the Earliest Scottish charters”, *Scottish Historical Review* 78 (1999), pp. 1-38.

³ David ruled southern Scotland before becoming king (see *infra*), and founded the abbey of Selkirk there ca. 1114. The foundation charter is printed in A.C. LAWRIE, *Early Scottish Charters Prior to 1153* (Glasgow, 1905), No. XXXV, and *Charters David I*, No. 14. The beneficiary of Alexander I’s charters was his (re-) foundation of Scone as an Augustinian priory (printed in LAWRIE, *Early Scottish Charters*, Nos. XXXVI (the foundation charter), XLVII, XLVIII and XLIX). The status of the surviving copy of Scone’s foundation charter is open to doubt. For the case “against” its authenticity, see A.A.M. DUNCAN, *Scotland: The Making of the Kingdom* (Edinburgh, 1975), pp. 640-641. The case “for” is put in *RRS I*, pp. 36-37. There are earlier Scottish royal charters to the monks of St. Cuthbert in Durham, relating to their possessions at Coldingham in the south-east of Scotland; these were produced at Durham (they are printed in LAWRIE, *Early Scottish Charters*, Nos. XVIII-XXII, XXIV, XXVI, XXIX-XXXIV).

⁴ Calculated from LAWRIE, *Early Scottish Charters*; *Charters David I*; *RRS I*; and *RRS II*.

Coluim IV (1153-1165) and William I (1165-1214), which survive as “originals”—that is, as contemporaneous single pieces of parchment.⁵ Much less survives from Ireland. The earliest extant Irish royal charter text is of Muirchertach Mac Lochlainn and is dated 1156/1157.⁶ There are ten extant charter texts of six Irish kings before 1200; only two of these survive as “originals”.⁷

Here, then, is an opportunity to explore the beginnings of the Latin charter in a society where charters were not used beforehand. The statement that Scotland and Ireland were previously “charterless” is controversial, however, and my first task will be to substantiate this point. I will then argue that the Latin charter, to begin with, was used predominantly by the Church (especially the new monastic orders) and only a few individuals close to the king; only later was it adopted to any notable extent by individual beneficiaries. I will focus my discussion on royal charters; these were the earliest documents generated in substantial numbers in the name of a single source of power within Gaelic society. The excellent editions of Scottish royal charters by Professor Barrow make the task very much more straightforward than it would otherwise be.⁸ I will also confine my discussion to property rights.⁹ My concern is more with beneficiaries than royal government, although the two cannot be taken in isolation: for example an important issue is how the adoption of charters was stimulated by royal interests.

First of all, why is it controversial to say that there were no charters in Scotland and Ireland before the Latin charters of the twelfth century? There were certainly writings in which property rights were recorded; the earliest to survive are in the Book of Armagh, a codex produced in 807.¹⁰ These can only

⁵ 29 for David I, 26 for Mael Coluim IV, 149 for William I; calculated from *Charters David I*, pp. 26-28, *RRS I*, p. 116, *RRS II*, pp. 106-107 (excluding *RRS II*, No. 295, which is included as an original *ibid.*, p. 89, and assigned there to scribe Dc). If facsimiles and one photograph of lost originals were included, the total would increase to 211 (1 more for David I, 2 more for Mael Coluim IV, and 4 more for William I). My figures are slightly different from those given in *Charters David I*, p. 2; *RRS I*, p. 57; and *RRS II*, p. 68.

⁶ Printed in *Monasticon Anglicanum*, ed. William DUGDALE, new edn., 6 vols. in 8 (London, 1817-1830), VI, part 2, pp. 1133-1134.

⁷ M.-Th. FLANAGAN, “The context and uses of the Latin charter in twelfth-century Ireland”, in: *Literacy in Medieval Celtic Societies*, ed. H. PRYCE (Cambridge, 1998), pp. 113-132, at p. 113. A photograph of one of the originals is reproduced at p. 116.

⁸ In order of publication: *RRS*, vols I and II, and *Charters David I*.

⁹ The greatest body of material which I have excluded relates to trading privileges, or concern the protection of existing property (or other rights), without reference to the original granting of these property rights.

¹⁰ *The Patrician Texts in the Book of Armagh*, ed. and trans. L. BIELER and F. KELLY (Dublin, 1979), pp. 166-179. For discussion, see *ibid.*, pp. 46-49, and J. STEVENSON, “Literacy in Ireland: The evidence of the Patrick dossier in the Book of Armagh”, in: *The Uses of Literacy in Early*

be regarded as “charters” if “charters” are defined simply by the information they contain; i.e. because they concern property rights. The issue I am interested in, however, is whether there was a special form of writing used for recording property rights. Writing usually has meaning from its words; but writing can also, of course, have meaning from the way it is presented. This can take the form of internal textual characteristics, such as an established form and particular elements, and external physical aspects, such as its script and layout, and the association with a symbolic object, such as a seal. There is a crucial distinction, therefore, between a mere statement of information about property rights, and a piece of writing with “other” dimensions of meaning which are deployed in a specialised way for property records (though not necessarily exclusively so). This distinction can most easily be made by reserving the term “charter” for the latter category.

It has been argued by Professor Wendy Davies that charters in this sense existed in Celtic societies (including Scotland and Ireland) from the early middle ages, and that they took a particular form, which she has called “Celtic charters”.¹¹ Her ideas have been widely accepted.¹² The crux of her argument is that these records had a simple, but recognisable, form “determined by the consistent inclusion of three constituent parts, disposition, witness list, and sanction”.¹³ None of these records survive on individual pieces of parchment,

Medieval Europe, ed. R. MCKITTERICK (Cambridge, 1990), pp. 11-35, at pp. 27-28.

¹¹ W. DAVIES, “The Latin charter-tradition in western Britain, Brittany and Ireland in the early mediaeval period”, in: *Ireland in Early Mediaeval Europe: Studies in Memory of Kathleen Hughes*, ed. D. WHITELOCK a.o. (Cambridge, 1982), pp. 258-280.

¹² A recent example is FLANAGAN, “The context and uses”, pp. 117, 123-124, 128. It is only fair to confess that I did so myself in M. ASH and D. BROWN, “The adoption of St Andrew as patron saint of Scotland”, in: *Medieval Art and Architecture in the Diocese of St Andrews*, ed. J. HIGGITT (Leeds, 1994: *British Archaeological Association Conference Transactions* 14), pp. 16-24, at p. 24, note 48.

¹³ DAVIES, “The Latin charter-tradition”, p. 262. If one (or even two) of these elements is missing, the Celtic charter is regarded as “incomplete” or a “fragment”. See e.g., her comment regarding some items in the Redon cartulary (W. DAVIES, “The composition of the Redon cartulary”, *Francia: Forschungen zur westeuropäischen Geschichte* 17.1 (1990), pp. 69-90, at p. 75 note 17) that one item “lacks witness list and sanction” while another two “lack sanctions, but although not full ‘Celtic’ forms they nevertheless belong to this distinctive tradition”. Another feature of this “tradition”, she has argued (DAVIES, “The Latin charter-tradition”, p. 269), are the use of particular formulas (e.g., property is “sacrificed” or “offered” to “God and St. X” “for ever” or “till Doomsday”). The use of these formulas, however, is decidedly uneven (especially so for Scotland and Ireland) and can be explained without reference to a written “tradition”: see D. BROWN, *The Charters of Gaelic Scotland and Ireland in the Early and Central Middle Ages* (Cambridge, 1995: *Quiggin Pamphlets on the Sources of Mediaeval Gaelic History* 2), pp. 42-44, and also p. 37 (and note 137).

but it has been assumed that they were originally written as such.¹⁴ There is a major problem as far as Scotland and Ireland is concerned, however. Only a very small proportion of property records actually contain these three elements.

There are two important collections of what may be regarded as “originals” of Gaelic property records; those in the Book of Deer and in the Book of Kells.¹⁵ (An annotated translation of the Deer records is provided as an appendix to this paper.) The Deer records were written into the Book of Deer sometime in the period *ca.* 1130-*ca.* 1150;¹⁶ the Kells records into the Book of Kells from the late eleventh century to 1161.¹⁷ Both the Book of Deer and the Book of Kells are gospel books produced centuries earlier.¹⁸ An analysis of the form of the Deer records (Appendix 1) reveals considerable diversity. There are no “Celtic charters”.¹⁹

Only four of the Kells records could be described as “Celtic charters”. All but one of the Kells records were written individually as “contemporary testimonies of the transactions which they relate”;²⁰ this is true for some, at least, of the Deer records.²¹ It would appear that contemporaries at Deer and Kells them-

¹⁴ See e.g., *Notitiae as Leabhar Cheanannais 1033-1161*, ed. G. MAC NIOCAILL (Dublin, 1961), pp. 1-2, in relation to the Kells records. It is now clear, however, that they were all (bar one) written contemporaneously with the transactions they recorded: M. HERBERT, “Charter material from Kells”, in: *The Book of Kells: Proceedings of a Conference at Trinity College, Dublin, 6-9 September, 1992*, ed. F. O'MAHONY (Aldershot, 1994), pp. 60-77, at pp. 61-62.

¹⁵ The best edited texts and English translations of the Kells records are in G. MAC NIOCAILL, “The Irish ‘charters’”, in: *The Book of Kells, MS 58, Trinity College Library, Dublin: Commentary*, ed. P. FOX (Luzern, 1990), pp. 153-165. For discussion, see HERBERT, “Charter material”; BROWN, *The Charters*, pp. 30-37 (where other examples of Gaelic property records are also discussed).

¹⁶ K.H. JACKSON, *The Gaelic Notes in the Book of Deer* (Cambridge, 1972), pp. 11-16, 89-91, 94-97.

¹⁷ HERBERT, “Charter material”, p. 62.

¹⁸ For the Book of Deer, see K. HUGHES, *Celtic Britain in the Early Middle Ages: Studies in Scottish and Welsh Sources* (Woodbridge, 1980), pp. 22-37. For the Book of Kells, see *The Book of Kells, MS 58, Trinity College Library, Dublin: Commentary*.

¹⁹ Davies considered that No. v.3 was a “Celtic charter” (DAVIES, “The Latin charter-tradition”, p. 261 and note 17), but the sanction was added by Hand C. The only record written by Hand C (No. vi) does not include a sanction, which suggests that this feature was not added to v.3 because Hand C thought it was a necessary part of a property record.

²⁰ HERBERT, “Charter material”, p. 62.

²¹ A clear exception is the extant material written by Hand A. There would also have been some lapse in time between the transactions recorded in Nos. III and IV and the writing of these records by Hand D if (as is likely) these transactions were originally recorded by Hand A (see *infra*). The records need not have been created *immediately* after the transactions to which they relate, of course: the composite No. v in the Book of Deer is presumably an example of transactions recorded contemporaneously in a batch shortly after, but not immediately after, the transaction had been made.

selves did not recognise the “Celtic charter” described by Professor Davies. What Prof. Davies has identified as “Celtic charters” may better be described as a phenomenon particularly of south Wales, an area whose property records she has done so much to illuminate.²² (There are problems with this, too, however.²³) As for Scotland and Ireland, the considerable variety in form suggests that there were no charters. The few common elements that there are can be explained as basic information you would expect in a property record, namely who gave what to whom. Guarantors or witnesses are frequently cited, but there are fundamental differences between Deer and Kells in the way these are treated,²⁴ which reinforces the impression that there was no generally accepted form.

There is one extra dimension to these texts: their appearance in illuminated gospel books, the most sacred writing of each church and its locality. The use of gospel books in this way may be sufficiently widespread to constitute a tradition (although not necessarily a distinctively Celtic or insular one).²⁵ Clearly property records in gospel books are not *merely* writings concerning property rights. Equally, however, there is no evidence that these property records could stand alone like a charter; they derived power and significance from their association with *other* writing, namely the gospel books. Perhaps, at most, they might be regarded as “proto-charters”?

The records in the Book of Deer are particularly interesting because they seem to reveal successive efforts to use writing more effectively in the defence of property rights.²⁶ At the beginning Hand A is content to recount the foundation legend (No. I) and give a simple list of donors and donations (No. II). Hand B lists three further donations (No. V), and in one case (V.1) gives the name of witnesses (including guarantors). Hand C is responsible for enhancing the work

²² See esp. W. DAVIES, *The Llandaff Charters* (Aberystwyth, 1979). For other examples, see DAVIES, “The Latin charter-tradition”, p. 260.

²³ Only one of the three extant Welsh collections (the seven records from Llandeilo Fawr, five of which correspond to Davies’s criteria) has not been doctored at some stage before assuming the form in which they survive. For editorial activity in the other collections, see DAVIES, *The Llandaff Charters*, pp. 14–16; C. BROOKE, *The Church and the Welsh Border in the Central Middle Ages* (Woodbridge, 1986), p. 90. For the Llandeilo Fawr records, see D. JENKINS and M. OWEN, “The Welsh marginalia in the Lichfield Gospels, Part I”, *Cambridge Medieval Celtic Studies* 7 (1984), pp. 91–120.

²⁴ BROWN, *The Charters*, pp. 35–36.

²⁵ Examples from across Europe are discussed in D. JENKINS, “From Wales to Weltenburg? Some considerations on the origins of the use of sacred books for the preservation of secular records”, in: *Vom mittelalterlichen Recht zur neuzeitlichen Rechtswissenschaft: Bedingungen, Wege und Probleme der europäischen Rechtsgeschichte*, ed. N. BRIESKORN a.o. (Paderborn, 1994), pp. 75–88. His argument for a Welsh origin of this practice is offered only tentatively.

²⁶ What follows is based on JACKSON, *The Gaelic Notes*, pp. 17–36 (edn. and transl.) and pp. 11–16, 89–91, 94–97 (discussion).

of Hands A and B by inserting statements reinforcing the claim to freedom from burdens demanded by local secular powers. What is most striking about Hand C's work, however, is that the single transaction it records (No. VI) includes features derived from Latin charters: it has a place-date, and it even uses a Latin phrase to open the witness list. There is nothing like this in the property records of Kells. Hand D takes the enhancing of existing records and the influence of Latin charters a stage further. Its records (nos IV and V) appear to be renovations of material originally written by Hand A, which has been erased and rewritten.²⁷ The first (No. IV) uses a Latin phrase to introduce the witness list, and it includes the king's regnal year as a time-date, which in Latin charters was deployed in Scotland only occasionally before 1222.²⁸ Hand D apparently ran out of space for such details in his second record (No. V). Another notable point about Hand D is that in one case (the letter *g* of *fer leginn*) it betrays the influence of Continental script. What is revealed here, it seems, is a gradual process of transition towards the use of charters by a literate group in a society which had previously been without charters. The final property record (No. VII) is itself a Latin charter written in Continental script, a charter of King David I confirming the freedom of the *clerici* of Deer from the demands of secular powers. We may guess that the *clerici* of Deer originally prepared this text on a single piece of parchment which was sealed, and that this was subsequently copied by them into the Book of Deer.²⁹ They now had the best of both worlds: a charter text in a sacred book. But there may have been a specific purpose for

²⁷ The Book of Deer is kept in Cambridge University Library (shelf-mark Il.6.32). My attempt to verify Jackson's discussion of Nos. IV and V for myself was hampered when I was initially refused permission to inspect the manuscript, and then (by the kind offices of the curator on duty) granted only limited access which allowed me to make only an inconclusive investigation. (I was informed by the curator that the authorities regarded me as a security risk because of my Scottish accent.) I am very grateful to Prof. David Dumville of Cambridge University for verifying for me the facts reported by Jackson.

²⁸ G.W.S. BARROW, "The Scots charter", in: *Studies in Medieval History Presented to R.H.C. Davis*, ed. H. MAYR-HARTING and R.I. MOORE (London, 1985), pp. 149-164, reprinted in G.W.S. BARROW, *Scotland and its Neighbours in the Middle Ages* (London, 1992), pp. 91-104, at p. 100; *RRS, Handlist of the Acts of Alexander II 1214-49*, compiled by J.M. SCOLAR (Edinburgh, 1959), p. 17.

²⁹ This would satisfy the doubts expressed in G.W.S. BARROW, "The charters of David I", *Anglo-Norman Studies* 14 (1991), pp. 25-37, at p. 29, where he found the Gaelic orthography for proper nouns puzzling, and considered the possibility that it may be "a subtle and ingenious forgery". Gaelic orthography is very rare presumably because Latin charters for Gaelic beneficiaries (and therefore the prospect of a scribe literate in Gaelic) are extremely rare. For other examples of Gaelic orthography in Latin charters, see D. BROWN, "Gaelic literacy in eastern Scotland, 1124-1249", in: *Literacy in Medieval Celtic Societies*, pp. 183-201, at pp. 194-196. On this charter see now *Charters David I*, p. 119.

copying the charter into the gospel book. It was not written immediately following the other records, but in the last significant empty space within the body of the book. It is stated in the charter itself that the king has confirmed what is written in the gospel book. Perhaps spaces were left blank between the existing records and the charter so that if property records were inserted in future the charter would apply to them also.

There are fundamental differences between the Latin charters of David I and the Gaelic property records of Scotland and Ireland. A Latin charter signified the donor's will, and was empowered by his seal. The greater the donor's authority, the more important the charter. It was written in a language and a script which could be read anywhere in Latin Christendom, and in a form and format which would be recognised in legal tribunals held in the king's name and in the name of the Holy Father. The greatest secular and ecclesiastical authorities could, potentially, be the guarantors of the property rights recorded in the charter. None of this was possible simply by writing Gaelic property records, which had no in-built connection with powerful institutions.

The *clerici* of Deer were able to move towards the writing of charters because, by the mid-twelfth century, charters had already been adopted by the king and some sectors of the Church in the kingdom's core areas in the east and the south of what is now Scotland. How had this come about? Who wrote the first generation of charters? Only a brief answer can be attempted here. (What follows is a summary anticipating a fuller discussion on some future occasion.) An important lead is offered by examining two sets of statistics relating to royal charters: (1) the proportion of originals produced by royal scribes, and (2) the proportion of ecclesiastical beneficiaries as against individual beneficiaries (including individual clerics). Both sets of statistics are compromised by difficulties of interpretation and definition. How representative is the corpus of extant charters or surviving originals? It is obvious, for example, that the preservation of particular archives and the varying practice of archivists forbids a superficial reading of the evidence. The identification of royal scribes is equally problematic. The appearance of the same cursive court hand in charters for a number of beneficiaries may point to a royal scribe, but too often the sample is very small. In the period 1124-1214 there are seven scribes who Geoffrey Barrow has proposed may be regarded as royal on the strength of only three, two, or even a single charter.³⁰ In the statistics which follow, therefore, only the

³⁰ *Charters David I*, pp. 26-28: Hands D1 (2 examples), D18 = H2 (3 examples), D19 (1 example) and D20 (1 example) (I have not included H6, which relates only to David's son Henry as earl of Northumberland). *RRS I*, p. 86 (see also *RRS II*, p. 84) for a scribe of Mael Coluim IV with 3 examples. For hands A1 (2 examples) and Dc (3 examples), see *infra*, notes 32 and 33.

clearest trends demand serious consideration. Clear trends are evident in each set of statistics, and they both point to the same conclusion: that the immediate context and purpose of the first generation of Scottish royal charters was provided by the Church, and by new monastic foundations in particular.

About 40 % of extant original charters of David I and Mael Coluim IV have been identified by Geoffrey Barrow as possibly or probably the work of royal scribes.³¹ In the first half of William I's reign (up to 1189) this figure is over 50%.³² By the end of William's reign a dramatic shift had occurred: two royal scribes produced *all* the 35 extant royal charters which survive as single pieces of parchment between 1200 and 1214. If Professor Barrow's classification of a further scribe as "royal" is accepted,³³ then this would mean that the six royal scribes who he identified as beginning to write charters after 1189 produced *all* extant original royal charters in the last half of William's reign.³⁴

The contrast with the proportion of original royal charters attributable to royal scribes in the period before about 1189 is too marked to be explained simply by vagaries of survival, and prompts the question who, apart from royal scribes, wrote royal charters earlier in the century. It is well known not only that ecclesiastical beneficiaries often wrote royal charters (presumably in consultation with the king's chancellor³⁵), but that the great majority of extant royal charters are for the Church (and new monastic foundations in particular). The table below relates specifically to grants of property rights and to confirmations of such grants.³⁶

³¹ The figures are 11 out of 29 for David I (see *Charters David I*, pp. 26-28); 11 out of 26 for Mael Coluim IV (see *RRS I*, p. 86, and *RRS II*, p. 84).

³² How much over 50% depends on whether Barrow's Hand A1 is included: there are only two examples of this hand in royal charters (not three as stated in *RRS II*, p. 87; No. 59 is identified by Barrow as the work of Aj, more certainly a royal scribe). If A1 is included, the figure is 45 out of 83; if A1 is excluded, it is 43 out of 83. (The figures are calculated from *RRS II*, pp. 85-88.)

³³ Hand Dc is identified in only three charters (not four, as stated in *RRS II*, p. 89; No. 295 is a later cartulary copy, not an original). The other five scribes are Da (13 examples), Db (8 examples; Barrow suggests that Db may be the same hand as Da), Dd (11 examples), De (5 examples), Df (28 examples, not including No. 495 which is not an original); *RRS II*, 88-90.

³⁴ It is impossible on current knowledge to know whether this situation was sustained in Alexander II's reign (1214-1249); the project of editing his charters (to be published as *RRS III*) has now been taken up by Dr. Keith Stringer of Lancaster University.

³⁵ The first recorded chancellor of the king of Scots was Herbert, who served Alexander I in the 1120s and continued under David I until *ca.* 1135 or a little earlier; see *Charters David I*, p. 32.

³⁶ As defined *supra*, p. 114, note 9. I have followed Barrow's classifications of grants and confirmations in the summaries for each item (see also, in general, *RRS I*, p. 60; *II*, pp. 69-70). There are inconsistencies in the terms employed in the charters themselves, however; see BROWN, *The Charters*, pp. 19-20 and note 73.

ALEXANDER I (1107-1124)

Grants	<i>to Churches:</i>	3	<i>to Individuals:</i>	0
Confirmations	<i>to Churches:</i>	0	<i>to Individuals:</i>	0

DAVID I (1124-1153)

Grants	<i>to Churches:</i>	61	<i>to Individuals:</i>	10
Confirmations	<i>to Churches:</i>	20	<i>to Individuals:</i>	0

MAEL COLUIM IV (1153-1165)

Grants	<i>to Churches:</i>	44	<i>to Individuals:</i>	8
Confirmations	<i>to Churches:</i>	49	<i>to Individuals:</i>	1 ¹

¹ Confirmation of earlier royal grants.

WILLIAM I (1165-1214). Period I: Dec. 1165 to Spring 1195²

Grants	<i>to Churches:</i>	81	<i>to Individuals:</i>	32
Confirmations	<i>to Churches:</i>	122	<i>to Individuals:</i>	27 ³

² This periodization reflects a change in the dating clause; see *RRS* II, p. 82.

³ Includes for first time confirmation of a grant from one individual to another.

Period II: Spring 1195 to Dec. 1214

Grants	<i>to Churches:</i>	17	<i>to Individuals:</i>	12
Confirmations	<i>to Churches:</i>	58	<i>to Individuals:</i>	23

Fig. 1. Outline figures for royal charters concerning transmission of property rights to Scottish churches and to individuals (including individual clerics).

The overwhelming preponderance of ecclesiastical beneficiaries before William's reign compared with the situation during his reign seems too significant to be put down entirely to the better preservation of charters by Church establishments. If this is considered together with the overwhelming preponderance of originals by royal scribes towards the end of the century, then a common conclusion emerges. In the first half century or so of royal charters many (probably most) were not only produced for the Church (particularly new monastic foundations), but by their scribes, not royal scribes. It may be proposed, therefore, that charters were introduced into Scotland as much (if not more) by the Church as by the king as part of the process of Church reform and the

founding of monasteries initiated by kings of Scots.³⁷ A link between Church reform and the introduction of charters has also been suggested *a priori* for Ireland by Marie-Therese Flanagan.³⁸

It would be a mistake, however, to suggest too sharp a distinction between royal and ecclesiastical interests as the inspiration behind the first use of charters. Royal charters, like the monasteries themselves, were new symbols of royal authority, and could reflect royal aspirations in a number of ways. Marie-Therese Flanagan has noted how a royal charter could employ terminology enhancing the status of the king in whose name it was written.³⁹ The charter's physical appearance would also have been important. The earliest extant "original" by a royal scribe is David I's charter, probably in 1124, recording his grant of Annandale in southern Scotland to Robert Brus, who was an important Anglo-Norman noble.⁴⁰ The grant itself had almost certainly been made at least four years earlier before David became king, when he had ruled most of what is now southern Scotland independently of his brother, Alexander I.⁴¹ The charter, however, was written after David I had succeeded Alexander, probably at the time of David's inauguration. It was a clear signal, therefore, that Brus's lordship of Annandale was now within David's kingdom. The charter, moreover, was modelled closely on English royal charters. This would have been apparent not only by its form and content, its overall shape and the royal seal, but also from the hand, which Geoffrey Barrow has observed "seems ... to belong to the Anglo-Norman royal tradition rather than, say, the Honour of Huntingdon or the church of Durham".⁴² This was a visual display of kingship which Robert Brus and his household are likely to have understood.

It might be inferred that David I's charter for Robert Brus was produced on the king's initiative. But equally Robert Brus was probably keen to acquire such a token that his lordship had royal sanction; the charter was kept by the Bruces for generations. The significantly increased proportion of royal charters to individuals in William I's reign (1165-1214) is striking, and suggests *prima facie* a growing use of royal charters among landholders in lay society. This can be supported by other trends. Before 1165 royal charters to individuals tend to

³⁷ G.W.S. BARROW, *The Kingdom of the Scots* (London, 1973), pp. 165-211.

³⁸ FLANAGAN, "The context and uses", pp. 117, 128-130.

³⁹ FLANAGAN, "The context and uses", pp. 117-119.

⁴⁰ LAWRIE, *Early Scottish Charters*, No. LIV; *Charters David I*, No. 16; BROWN, *The Charters*, pp. 1-2.

⁴¹ W.E. KAPALLE, *The Norman Conquest of the North: the Region and its Transformation* (London, 1979), p. 207.

⁴² BARROW, *Scotland and its Neighbours*, p. 102 (Pl. 1(a) is a photograph of the charter). David I was also earl of Huntingdon in England.

be for key members of the royal household or following. Later, however, there are an increasing number of royal charters for less important members of the aristocratic elite. Also, before 1165 there are no examples of royal confirmations of grants by one knight to another; there are 27 examples between 1165 and 1214 (13 before 1195, 14 after 1195). Taken together, all this suggests that there may in reality have been a significant increase in the number of royal charters to individuals about half a century after the beginning of royal charters in Scotland, and that this occurred because charters were adopted by a wider section of the aristocratic elite. Moreover, this growing demand for royal charters may have been a significant factor in the increasing proportion of charters produced by royal scribes. Another factor, of course, must have been royal interest in using charters as a way of defining relationships with leading subjects in detail and in more concrete terms, and as symbols of royal authority.⁴³ Only this will ultimately explain why all extant “originals” of royal charters in the last part of William’s reign were produced by royal scribes.

The two stages I have outlined in the adoption of charters in Scotland may seem unremarkable. Neither stage should be regarded as invariable or inevitable, however. To begin with, kings needed to have the resources as well as the motivation to establish new monasteries and encourage Church reform. The kings of Scots were able to endow new monasteries on a significant scale partly because they had recently established (or made more effective) their control over more territory, particularly in what is now northern and southern Scotland. The subsequent widening adoption of charters among individuals was only likely to occur where secular power was sufficiently consolidated to make charters in the name of a ruler seem worthwhile. One measure of this consolidation in Scotland is the development of a new class of royal official, the sheriff, who looked after the king’s affairs in a particular locality. By the late twelfth century these officials had not only been established throughout the kingdom’s core area, but were acquiring judicial functions in relation to the safeguarding of property. Irish kings did not attain this kind of consolidated position, which

⁴³ A good example is William I’s confirmation of David’s grant of Annandale to Brus (*RRS* II, No. 80). Not only is it much more specific than David’s charter, but it shows particular concern on the king’s part to insist on his legal jurisdiction (this is the earliest instance where the “pleas of the crown” are itemized). Also, it was visually impressive. Barrow in his edition remarks that “before it suffered injury [it] has been a very handsome charter”, and notes the “handsome seal ribbon of woven silk”. Barrow observes generally that “a very high proportion of the surviving silken ribbons or cords belong to charters for prominent lay barons” (*RRS* II, p. 93), which suggests either a conscious royal “statement” or (especially if the beneficiaries paid for this) the high regard these barons had for a royal charter.

might explain why the wider diffusion of charters did not occur in Gaelic Ireland.

To conclude. It appears that charters were adopted in the Scottish kingdom because of fundamental changes in sources of authority. Latin charters were particularly well suited for drawing on the growing efficacy of the Church as an institution in this period. The Church's resurgence created opportunities for kings to consolidate and increase their power. It was worthwhile for new monastic foundations to produce a charter for a donor to seal, and to use these charters to produce a confirmation for the king to seal, which might encompass all their property rights in an especially impressive charter; and they could then send these to the curia in order to obtain a papal privilege. Once the growth of royal authority had taken root, royal charters became meaningful not just for ecclesiastical establishments but also for a wider pool of individual landholders seeking to secure their property rights. Irish kings did not enjoy a similar growth in their authority, so the use of charters in the name of Irish kings was very much more limited in this period. With the writing of charters in twelfth-century Scotland, therefore, we can witness a change from a society grounded in local power structures to one in which Church and kingdom were becoming increasingly significant. The Deer records afford a rare glimpse of a literate community gradually beginning to make this transition. The eventual outcome of this shift away from purely local power structures was when property rights were no longer transferred primarily or simply in a ceremony on the land itself in which local participation was essential, but could be conferred first by a charter in anticipation of the ceremonial transaction in the locality. The first known example in Scotland of a charter preceding such a ceremony is in 1271.⁴⁴ Shortly before this time a type of document had emerged (referred to generically as pleadable brieves) which provided a mechanism for anyone to seek royal protection of their property rights through the judgement of men of standing in their sheriffdom.⁴⁵ The local and the regnal had merged into a new structure.

⁴⁴ See BROWN, *The Charters*, pp. 13-16. Such a ceremony continued to be a legal requirement until 1845.

⁴⁵ H.L. MACQUEEN, *Common Law and Feudal Society in Medieval Scotland* (Edinburgh, 1993), esp. pp. 105-111, 136-146, 167-175, 188-196, 247-255; note his general observation (at p. 253) that Scottish royal justice "never lost its connection with the local community", so that (in the justiciars' courts) "where the English royal justices came into the local community and imposed their view of the law and the correct way to settle disputes, so to speak from above, in Scotland decision-making in court combined views from above with those from below who would be affected by it".

Appendix I

Analysis of the Property Records in the Book of Deer

Hand A

I

Foundation legend which includes *Dispositio* and *Sanctio*

II

15 *Dispositiones*

General *Benedictio*

Hand B

v.1

Dispositio

Testes/Guarantors

v.2

Dispositio

v.3

Intitulatio

Dispositio

[*Sanctio* and *Benedictio* added later by **Hand C**]

Hand C

v1

Intitulatio

Dispositio

Testes/Guarantors

Datum

Hand D

III

Dispositio

Datum

Testes

IV

Dispositio

Testes

Appendix II

Property Records in the Book of Deer⁴⁶

Entered *ca.* 1130-*ca.* 1150 into blank pages and margins in the Book of Deer, a ninth-century illustrated gospel book

Historical Background

Deer is in the province of Buchan in north-east Scotland. The ruler of Buchan was a *mormaer* ("earl") who would have owed allegiance directly either to the king of Scots or the king of Moray. Deer was a major church served by a group of *clerici*. It was not the only major church in Buchan; there were others at Ellon and Turriff. The property records were written during an unsettled period in Buchan's history. The power of the kings of Moray was destroyed at the battle of Stracathro in 1130, and after this victory King David I of Scotland (1124-1153) made fundamental changes to the structure of north-east Scotland. What was probably the chief bishopric of the region (at Mortlach) was divided and two new dioceses created, one at Aberdeen, the other near Elgin, both of which were new royal burghs established by David I. After *ca.* 1150 nothing more is known of the *clerici* of Deer. In 1219 their possessions were used by the *mormaer* of Buchan to found a Cistercian abbey at Deer.

Translation

This is adapted from Jackson, *The Gaelic Notes*, pp. 33-36 (using also the textual notes, pp. 37-84). The changes made to Jackson's translations are not corrections (except for a phrase which he missed out), but are different interpretations which should be read alongside Jackson's translation in order to gain a fuller sense of the text's possible meaning. For instance, there is uncertainty about whether some of the names and descriptions given to places were actually place-names. Jackson usually rendered them as place-names; in this translation I have tended to the other extreme and treated any name (if practicable) as if it

⁴⁶ Information on the hands, dating, and Gaelic technical terms derives from JACKSON, *The Gaelic Notes*, pp. 11-16 (hands), 89-91 and 94-97 (dating), 102-124 (terms). For these technical terms, see also BARROW, *The Kingdom of the Scots*, pp. 37-68.

were a simple description, unless it is attested elsewhere as a place-name; for example, where Jackson has *Cloch in Tiprait*, which he took to be a lost place-name, this is translated here “the stone of the spring”. In reality, of course, some of Jackson’s lost place-names will indeed have been place-names, but some will not. The real situation overall, therefore, will lie at some indiscernible point in between the extremes adopted here and by Jackson.⁴⁷

All Gaelic has been translated, except for the technical terms or where there is uncertainty about the meaning or the transcription. All the Latin has been left untranslated.

I

Hand A. Insular script. Written in blank pages (f. 3r-v).

Columba⁴⁸ and Drostán son of Coscrach, his disciple, came from Iona to Aberdour, as God revealed to them; and when they got there they found the *mormaer*⁴⁹ of Buchan was Bede the Pict; and it is he who granted them that *cathair*⁵⁰ [Aberdour] in freedom till Doomsday from *mormaer* and *toisech*.⁵¹ After that they came to the other *cathair* [Deer]; and it pleased Columba, for it was full of the grace of God. And he begged the *mormaer* (i.e. Bede) that he should give it to them, but he did not. And after the clerics had been refused a son of his [of Bede] became ill, and was at death’s door. Thereupon the *mormaer* went to plead with the clerics that they should offer a prayer on behalf of the boy, so that he might be restored to health. And he gave to them in alms from the stone of the spring as far as the stone of the *pett*⁵² of Mac Gartnait. They offered the prayer, and health was restored to the boy. Thereupon Columba gave that *cathair* to Drostán, and blessed it; and he left a curse that whoever

⁴⁷ See further the analysis in S. TAYLOR, “The onomastic landscape of the Gaelic notes”, in: *Studies in the Book of Deer*, ed. K. FORSYTH (Dublin, forthcoming).

⁴⁸ St. Columba or Colum Cille of Iona (†597). The original patron saint of Deer was Drostán (a significant saint in north-east Scotland). The association with Columba in this legend is presumably a later development.

⁴⁹ This term literally meant either “great steward” or “sea steward” (Jackson preferred the former); the usual English translation is “earl”.

⁵⁰ This term can mean “fortress, city, monastery/major church”; or it may refer to a small unit of secular lordship.

⁵¹ This term usually means “leader, chief”; or it may refer to the official in charge of a small unit of secular lordship.

⁵² A difficult term to translate. It is found in over 300 place-names. It has been borrowed from Pictish into Gaelic (*pace* Jackson), and is related to Welsh *peth*, “thing”, and French *pièce* (from Gaulish **petia*) which has been borrowed into English. In modern dialects of Gaelic it means a small patch of land (sometimes very small). On *pett*, see now R.A.V. COX, “Modern Scottish Gaelic reflexes of two Pictish words: **pett* and **lannerc*”, *Nomina* 20 (1997), pp. 47-58. As a place-name element in this period it apparently refers to a unit of landholding roughly equivalent to a modern farm.

should go against it should not reach their prime, either in years or success. As he was parting from Columba, tears [*déra*] came to Drostan's eyes: Columba said, "Let *Déar* [Deer] be its name from now on".

II

Hand A. Insular script. Written in blank pages (ff. 3v-4r). Apparently it originally filled all of f. 4r, but the final portion has been erased and written over by Hand D (see III and IV). Words in bold denote an addition by Hand C.

1. Comgell son of Aed gave from the Ordie as far as **Púiréne* to Columba and Drostan.

2. Muiredach son of Morgann gave the *pett* of Mac Gartnait⁵³ and the field of *Toiche Teimne*; and he was *mormaer* and *toisech*.

3a. Matain son of Cairell gave the *mormaer*'s "share" [*cuil*]⁵⁴ in Altrie,

3b. and Cú Lí son of Baithín gave a *toisech*'s "share" [*cuil*].

4. Domnall son of Giric and Mael Brigitte son of Cathal gave the *pett* of the mill to Drostan.

5. Cathal son of Morgann gave the field of the clerics to Drostan.

6. Domnall son of Ruaidrí⁵⁵ and Mael Coluim son of Cuilén⁵⁶ gave Biffie to God and to Drostan.

7. Mael Coluim son of Cinaed [king of Scots, 1005-1034] gave the king's "share" [*cuil*] in Biffie and in the *pett* of Mac Gobraig,⁵⁷ and two *dabachs*⁵⁸ of **uachtair rois an baird* [upper part of the poets' ridge].

8. Mael Coluim son of Mael Brigitte [ruler of Moray and king of *Alba*, †1029] gave the Elrick ["the deer trap"].

9. Mael Snechta son of Lulach [king of Moray, †1085⁵⁹] gave Mael Duib's *pett* to Drostan.

⁵³ Or "*pett* of the descendants of Gartnait": the abbreviation of *mac* in the manuscript makes it difficult to know whether genitive singular (*meic*) or genitive plural (*mac*) is intended. The same problem is encountered in I (*supra*), and in the "*pett* of Mac Gobraig" (see *infra*, II.7 and III).

⁵⁴ Presumably refers at least to payments in kind levied by lords; these payments are usually called *cáin*.

⁵⁵ Findlaech son of Ruaidrí (†1020) was ruler of Moray; perhaps he was brother of Domnall. (Findlaech's son was Mac Bethad, "Macbeth", the celebrated king of Scots.)

⁵⁶ There was a king of Scots called Cuilén who reigned 966-971. His only known son was Cústantín (king of Scots, 995-997).

⁵⁷ The same place is mentioned *infra*, in No. III, in a transaction dated 1131/1132. The mention here, in II.7, of "*pett* of Mac Gobraig" (or "*pett* of Gobraich's descendants") is not certain evidence that the place was so described in the early eleventh century: II.7 was not certainly in writing before ca. 1130. Cf. the mention of "field of the clerics" in II.5, which was probably so described only *after* its acquisition by the *clerici* of Deer.

⁵⁸ A unit of assessment for payments and military service.

⁵⁹ He may have been deposed in 1078. His father, Lulach, was king of Scots, 1057-1058.

10. Domnall son of the son of Dubucán “quenched”⁶⁰ all grants in favour of Drostan in return for giving him [Domnall] his [Drostan’s] goodwill.

11. Cathal [?son of Morgann] “quenched” his *toísech*’s “share” [*cuit*] on the same terms, and gave a feast for a hundred every Christmas and Easter to God and to Drostan.

12. Cainnech son of the son of Dobarchon and Cathal [?son of Morgann] gave Altrie of the cliff of the birch-tree of the river-bend [**caimse*], as far as the birch-tree between the two Altries.

13. Domnall [?son of the son of Dubucán] and Cathal [?son of Morgann] gave Ednie to God and to Drostan.

14. Cainnech [?son of the son of Dobarchon] and Domnall [?son of the son of Dubucán] and Cathal [?son of Morgann] “quenched” all grants in favour of God and of Drostan from beginning to **end, free from *ormaer* and *toísech* till Doomsday.**

III and IV have been written by Hand D after erasing the continuation of II written by Hand A on the rest of f. 4r. Possibly Hand D has rewritten and improved on the original text by Hand A.

III

Hand D. Insular script, influenced slightly by Continental script.

Gartnait son of Cainnech and Éte daughter of Gille Míchéil gave the *pett* of Mac Gobraig, free of all burdens, to Columba and Drostan for the consecration of a church to Christ and of Peter the apostle, with a pledge of this to Cormac, bishop of Dunkeld; the eighth year of the reign of King David [April 24 1131 x April 23 1132]. *Testibus istis*: Nechtán bishop of Aberdeen, and Léot abbot of Brechin, and Mael Domnaig son of Mac Bethad [appears in Fife as a judge], and Aluine son of Airchill [*rannaire* at the king’s court], and Ruaidrí *ormaer* of Mar, and Mataidín the judge, and Gille Críst son of Cormac, and Mael Petair son of Domnall, and Domangart *fer légin*n [“lector”, head of a *scriptorium*] of Turiff, and Gille Coluim son of Muiredach, and Duibne son of Mael Coluim.

IV

Hand D. Insular script. He was running out of space on f. 4r.

Gartnait [son of Cainnech] and [Éte] daughter of Gille Míchéil gave the deep spot in Pitfour to Christ and to Columba and to Drostan. *Teste*, Gille Caillíne the priest, Feradach son of Mael Bricín, and Mael Giric son of Tráillín.

⁶⁰ This technical term is unique to these texts. It probably means that the donor gave up his right to payments and services which were owed by Deer from its lands.

II (end)

Hand A. Insular script. Large writing at top margin of f. 4v. Hand A originally wrote on the whole of f. 4r, but the latter part was erased and written over by Hand D (III and IV).

AND THE BLESSING OF THE LORD ON EVERY *MORMAER* AND ON EVERY *TOISECH* WHO SHALL COMPLY WITH IT, AND TO THEIR DESCENDANTS AFTER THEM

V

Hand B. Insular script. Written down the left-hand margin and bottom margin of f. 4v. Words in bold denote an addition by Hand C.

1. Donnchad son of Mac Bethad son of Ided gave Auchmachar to Christ and to Drostán and to Columba, in freedom till Doomsday. In witness of it, Mael Féichín and Comgell and Gille Críst son of Finguine, as testimony, and Mael Coluim son of Moiléne.

2. Cormac son of Cennéitech gave as far as Skillymarno.

3. Comgell son of Cainnech, *toisech* of Clann Chanann, gave to Christ and to Drostán as far as the great pillar-stone at the end of the thicket nearest *Ailldín Ailenn*, from *Dubhuice* to *Lurchaire*, both waste and farmland, **free of *toisech* till Doomsday; and his blessing on everyone who shall maintain this thereafter for ever, and his curse on everyone who shall come against it.**

VI

Hand C. Insular script. Written down right-hand margin and bottom margin of f. 5r. This hand also made additions to II and V.

Colbán, *mormaer* of Buchan, and Éva, daughter of Gartnait his wedded wife, and Donnchad son of Síthech, *toisech* of Clann Morgainn, “quenched” all grants, in favour of God and Drostán and of Columba and of Peter the apostle, from all burdens relating to the “share” [*cuil*] on four *dabachs* of that which should devolve on the chief districts⁶¹ of Scotland in general and on chief churches. *Testibus his*: Bróicín, and Cormac abbot of Turriff, and Morgann son of Donnchad, and Mael Féichín, and the two sons of Maitne, and all the good men of Buchan in witness of it. At Ellon.

⁶¹ Literally “inhabited places”. The precise meaning is obscure (JACKSON, *The Gaelic Notes*, p. 78, suggested “house”, meaning here “religious house”).

VII⁶²

Hand E. Continental script with some influence of insular script. Written on f. 40r, the significant empty space nearest the end of the MS. Perhaps this was to allow for later records to be entered on empty spaces in preceding folios in such a way that this charter would seem to apply to them as much as to the original property records. It can be dated sometime between 1139 and 1153, probably nearer AD 1150.

David rex Scottorum omnibus probis hominibus suis salutes. Sciatis quod clerici de Dér [Deer] sint quieti et immunes ab omni laicorum officio et exactione indebita, sicut in libro eorum scribitum est, et dirationauerunt apud Banb [Banff] et iurauerunt apud Abberdeon [Aberdeen]. Quapropter firmiter precipio ut nullus eis aut eorum catellis aliquam iniuriam inferre presumat. Teste Gregorio episcopo de Duncallden [Dunkeld]. Teste Andrea episcopo de Cat' [Caithness]. Teste Samsone episcopo de Brechin. Testibus Doncado comite de Fib [Donnchad mormaer of Fife], et Malmori d'Athótlā [Mael Muire of Atholl], et Gillebríte comite d'Éngus [Gille Brigte mormaer of Angus], et Gillecomded mac Æd, et Brócin, et Cormac de Turbrud [Turriff], et Adam mac Ferdornac, et Gillendrias mac Matni. Apud Abberdeon [Aberdeen].

⁶² For text and commentary, see *Charters David I*, p. 119.

The Use of Charters and Other Documents in Přemyslide Bohemia

IVAN HLAVÁČEK

The topic proposed initially, an overview of the whole of the Bohemian Middle Ages, would be impossible to present within the space available. For one thing, the period is too long. Secondly, the variety of late medieval documents is so great, and indeed grew over time, that even if we were to limit ourselves to Bohemia itself we would end up only giving a list of the main phenomena. Not least of all, in the Luxembourg period, we must include the key element of the chancery of the Bohemian kings, the imperial diplomatic documents.¹ Therefore, we have decided to reduce the scope considerably and offer an outline of the complex use of charters and/or commercial documents in Přemyslide Bohemia, which is one of the basic problems of the general process of increasing literacy. That too is an extensive topic, since we must consider both sides of the coin, not only the local production but also the foreign charters and commercial documents that entered the country. Closely connected to this are related issues, primarily the many formulas of all kinds which were used as aids and which emerged especially toward the end of the Přemyslide period.

As we know, the Bohemian state entered the circle of western culture more clearly at the end of the ninth century, (the Old or Great Moravian period will not be treated here for various reasons). That is not at all to say that the use of the written documents in commerce must be assumed from the beginning. One

¹ I would like to refer to the academic text *Česká diplomatika do r. 1848*, ed. Z. FIALA, Z. HLEDÍKOVÁ and J. ŠEBÁNEK (Prague, 1971), esp. chaps. 5 and 6. After almost a third of a century this work needs additions in many places.

of the reasons for this was the general (central) European intellectual decline which removed the conditions necessary for the composition of written documents and especially written legal proceedings. In order to provide a meaningful overview of the development, or unfolding, of events during more than three centuries (almost the entire tenth century can be left out), it is necessary to establish a concrete periodization, which however cannot make use of specific dates, but only can indicate transitions.

Usually the period up to the extinction of the Přemyslide rulers² (1306) is divided in two parts, which are separated by the definitive coming to power of Přemysl I in 1198 and the change of the duchy of Bohemia into a kingdom. That is certainly plausible, indeed justified, for both qualitative and quantitative reasons, but to gain a better view of the period we should mention at least one or two milestones. Within the first period (till 1198) there are transitions at the end of the tenth and beginning of the eleventh century, and at the beginning of the twelfth century. Within the second period there are the beginnings of the reign of Přemysl II in 1253. Whereas the first two period markers are not always clear, relatively or absolutely, the middle of the thirteenth century is closely connected to the accession to the throne of Přemysl II in Bohemia as well as in Austrian territories. It meant first of all an important extension of the competencies of the Bohemian sovereign and at the same time, new requirements of the administration agenda. It should also be considered that around this time the appearance of the city necessitated new, or at least more elaborated forms of administration. In other words, the written documentation process began to differentiate considerably.

But let us now address the concrete material. First, we must briefly consider its accessibility and the specialized literature about it; this body of literature is fairly extensive and can only be considered selectively. After various beginnings and much theorizing, work on the critical *Codex diplomaticus et epistolaris regni Bohemiae* (which was intended to include Moravia as well, and indeed did include Moravia) was begun at the turn of the twentieth

² In the following, a succinct knowledge of the Bohemian history of the Přemyslid period is presumed. Foreign scholars who do not have an intimate knowledge of this history may want to consult, apart from the *New Cambridge Medieval History*, vol. 4.1-2, ed. D. LUSCOMBE and J. RILEY-SMITH (Cambridge, forthcoming), the passages by K. RICHTER in: *Handbuch der Geschichte der böhmischen Länder* 1, ed. K. BOSL, (Stuttgart, 1966-1967); F. PRINZ, *Böhmen im mittelalterlichen Europa*, (Munich, 1984), and J. HOENSCH, *Geschichte Böhmens* (Munich, 1987; 1997³), ch. 3. In Czech there are two studies by J. ŽEMLIČKA, *Čechy v době knížecí* (Prague, 1997) and *Století posledních Přemyslovců* (Prague, 1986), as well as M. BLÁHOVÁ, J. FROLÍK and N. PROFANTOVÁ, *Velké dějiny země Koruny české 1 (do roku 1197)* (Prague and Litomyšl, 1999), and V. VANIČEK, *Velké dějiny země Koruny české 2 (1197-1250)* (Prague and Litomyšl, 2000). All of these works have extensive bibliographies.

century.³ Through the efforts of Gustav Friedrich starting in 1904, two and a half volumes appeared in the what was then modern "Sickel'schen" manner and extend to 1238. After World-War II an attempt was made to speed up the work; this was done most fastidiously, particularly by Jindřich Šebánek and Saša Dušková in six volumes and covering the period up to the year of Přemysl II's death on the Marchfield in 1278.⁴ We are pleased to report that preparations are being made to complete the enterprise, that is to say up to 1310, on the basis of material gathered by these two scholars in Brno. Publication of new volumes is expected in the foreseeable future. Until then we will have to make do for the last years, almost three decades, with the old *Regesta diplomatica nec non epistolaria Bohemiae et Moraviae* edited by Josef Emler which lacks any critical apparatus. The work does have one great advantage however: an appendix offers the largest selection of Bohemian formulas from that time, though without critical analysis.⁵ The diplomatic and historical analysis of all of this material involves a long series of works; therefore, once again we only mention the most important.

Although the first diplomatic studies began to be published more than 200 years ago, the Vienna Institut für Österreichische Geschichtsforschung and the first *Codex* scholar, Gustav Friedrich, are names that are linked together as marking modern research. Gustav Friedrich was not only the first editor of the above-mentioned *Codex*, but also the author of the first analytical modern diplomatic studies; he did not, however, achieve a synthesis. Even today we do not have a true synthesis in the full sense of the word, although Jindřich Šebánek and Saša Dušková have made essential contributions in connection with their edition project (I think of the broad-range survey and especially of their diplomatics of King Přemysl II).⁶ Although we do not have a more concise specialized bibliography, such as that compiled by Anna Adamska for the Polish situa-

³ CDB.

⁴ The lacuna concerning the third part of the third volume (addenda and register for the Wenceslaus I period (1230-1253), by J. BISTRICKÝ, is forthcoming.

⁵ *Regesta diplomatica nec non epistolaria Bohemiae et Moraviae* 2, ed. J. EMLER (Prague, 1892). The article by D. TREŠTÍK, "Formularze czeskie XIII wieku", *SZC* 7 (1962), pp. 43-56 summarizes the later work on this source material.

⁶ J. ŠEBÁNEK and S. DUŠKOVÁ, "Das Urkundenwesen König Ottokars II. von Böhmen", *AfD* 14 (1968), pp. 302-422 and 15 (1969), pp. 251-426. They have published analytical studies on this subject elsewhere, especially on the royal charter of Přemysl II's predecessors, listed in: J. ŠEBÁNEK and S. DUŠKOVÁ, *Výbor studií k Českému diplomatáři* (Brno, 1981), pp. 159 ff.

tion,⁷ there are other studies that are easily found in the various reference works.⁸ But now on to more concrete matters.

At the end of the first millennium, foreign charter material entering early Přemyslide Bohemia consisted primarily of papal charters and/or briefs, albeit only as isolated individual pieces. While we know nothing of a possible papal charter about the founding of the Prague diocese (the document we know today is probably a forgery of about 100 years later), the confirmation charter of the founding of the monastery of Břevnov by Pope John XV in 993 is probably the oldest example of a charter which was preserved in the country. At the same time this charter has an unusual history and has been interpolated several times in the following centuries. On the basis of the material—it was papyrus—it is only preserved in a confirmation of the thirteenth century.⁹ However, in this early period, the role of the second Prague bishop, St. Adalbert, should not be underestimated, and the assumption that he conducted at least a busy foreign correspondence, must be taken as probably true. All the more since in all probability it was his personal seal stamp that was used.¹⁰

From the time around and shortly after 1000, we find only unclear traces of legal documents. For the birth of national diplomatics perhaps the most important document is what is known as the foundation charter of the chapter of Litoměřice which, although undated, is usually taken to be from 1057 or 1058. Its oldest sections at least are supposed to have been conceived at that time. It carries a fictive seal and it is not a charter in the strict sense of the word, but a

⁷ A. ADAMSKA, "Bibliographie de la diplomatie polonaise, 1956-1996", *AfD* 44 (1998), pp. 275-336.

⁸ Especially helpful is vol. 4 of part 5 of *CDB*, where the list of works goes beyond the period which is covered in several ways, and *Česká diplomatika*, ed. FIALA. A small selection of the most important materials is presented below.

⁹ For these two oldest "preserved" diplomatic texts, see the recent articles of J. ŽEMLIČKA, "K hodnověrnosti listiny Jana XV. pro klášter v Břevnově (31.v.993)" (with a summary "Zur Glaubwürdigkeit des Privilegs Johannis XV. für das Kloster Břevnov (31.v. 993)"), in: *993-1993, Milénium břevnovského kláštera* (Prague, 1993), pp. 25-39, and J. PRAŽÁK, "Privilegium per vetustum Boleslai", in: *ibid.* pp. 14-24. Although both in their present state date from the thirteenth century, they are considered to be based on contemporary documents. The foundation charter of Prague diocese of 993 (mentioned only in the *Chronicle* of Cosmas) is interpreted as an eleventh-century forgery (all three are printed in *CDB* 1, Nos. 38, 375 and 371).

¹⁰ Not only his "studies abroad" testify to this, but also the expression concerning his "*verisimila argumenta*", which is interpreted as Adalbert's seal. If correct, it must have been his private seal meant for correspondence, since it predates the fashion for such seals in Bohemia. Aside from this, the problem of the bishop's seal in Bohemia is very complicated and we can only refer to the most recent serious study by R. NOVÝ, "Jedna z otázek české sfragistiky", *Zápisky katedry československých dějin a archivního studia* 5 (1961), pp. 77-84. Only after the middle of the twelfth century can we speak of an authentic seal of the Prague bishops.

written record made over a number of years concerning the properties as they were acquired and corvées as they were assigned. This legal document may be the oldest of the individual administrative documents known to date, but it is not isolated from a broader framework. Up to the end of the twelfth century we find a number of written documents of Church institutions, but none as important or of such size as the Litoměřice document. There are also the slightly younger dorsal notes preserving the first sentence written in Czech, which almost certainly dates from the twelfth century.¹¹

The actual, albeit premature, beginning of charter production in the full sense of the word is connected to the reign of the first Bohemian king Vratislav, but from the time when he was still just a duke. Proof of this is complicated, because the four documents written in his name to different individuals must be considered unauthentic in their present form. Moreover, their close similarity in wordings allows the inference that their predecessors were the work of the issuer. Thus, we conclude that they must have originated at court, but this conclusion must be taken in its broadest sense. Apart from these sources we have clear, yet only one-sided, traces of Vratislav's extensive diplomatic correspondence with the papal curia (altogether there are more than a dozen letters from Gregory VII).¹² But the decline of the power of Vratislav's immediate ducal successors did not favour local diplomatic activity and thus we can only speak of the definitive origin of Bohemian-Moravian charters with the pontificate of the bishop of Olomouc, Henricus Zdík (1125-1150), who was a man with an open, world orientation and was a highly cultured prelate. Undoubtedly the Worms concordat and its spirit played a part in this. Four charters by Zdík have been preserved: three for internal use in his cathedral church, the other for the oldest and most important Premonstratensian monastery of the country, Strahov.¹³ We consider the charter forms to be fully developed. As far as subject matter is concerned, not only spiritual but also worldly business is addressed.

¹¹ The discussion of the state of charter production in Bohemia in the eleventh century is summarized by Z. FIALA, "K počátkům listin v Čechách", *Sborník historický* 1 (1953), pp. 27-45; see also the review by J. ŠEBÁNEK in *Časopis Matice moravské* 74 (1955), pp. 332-337. Until now, the broadest presentation of the diplomatic situation in Přemyslid Bohemia is by J. ŠEBÁNEK and S. DUŠKOVÁ, "Česká listina doby přemyslovské", *Sborník archivních prací* 6 (1956), part 1, pp. 136-211 and part 2, pp. 99-160. It concentrates on charters of clerical and lower secular dignities and cities. Ducal and royal diplomatic documents (see the selection of works mentioned *supra*, note 6) and the early non-legal diplomatic documents and formularies are not considered.

¹² This concerns all of the documents printed in *CDB*. Unfortunately, it is not always possible to give precise indications. Nor do we wish to comment on forgeries that were prepared in Vratislav's name.

¹³ See J. BISTRICKÝ, "Studien zum Urkunden-, Brief- und Handschriftenwesen des Bischofs Heinrich Zdík von Olmütz", *AfD* 26 (1980), pp. 135-258.

There are also other indications of relatively wide activities of this kind: several letters from the pope, but also from other sources addressed to him (which however on account of the strict critical approach of the *CDB* editor were not included in that edition); this allows us to assume that he created documents in return. There is more: an imperial charter from Conrad III for Zdík which is preserved in the original and served as model for Zdíks own charters.¹⁴ Palaeographically, these influenced in turn an internal charter destined for Zdík from the Bohemian duke and later King Vladislav, so that it may be assumed that Zdík had them dictated and probably also written the engrossment.¹⁵ Another charter, the first by the Bohemian high nobility of this time, which counts as the foundation charter of the richly endowed Cistercian monastery of Sedlec, is also closely connected to the prelate discussed above, so that it may be said without exaggeration that Zdík was a central figure in the continuous diplomatic production of Bohemia, although around this time the names of the ducal chancellors appear in the chronicles; they were always included among the dignitaries of the Prague or Vyšehrad church, but were hardly involved with the creation of charters.

Going over the document lists for all of the eleventh and twelfth centuries, a number of single, unrelated pieces is attested, as well as sometimes continuous written lists. These types of documents came slowly to an end around 1200 however.¹⁶

The establishment of the new religious orders, brought into the country mostly under Zdík's influence, contributed to an increase in documentation, since both the Cistercians and the Premonstratensians appreciated the written codification of the various legal proceedings more than the "old-fashioned" Benedictines or other older Church institutions, which only slowly accepted written legal proceedings.¹⁷ We have already mentioned that Zdík was also undoubtedly behind the creation of the first charter in the name of a Bohemian nobleman. And as he was in close contact with the Bohemian duke (and from 1158 king), we may assume from this contact the gradual development of the Přemyslide use of charters in noble circles. And only a few years later, shortly

¹⁴ *MGH D Ko III*, No. 106, May 1144, pp. 189-192.

¹⁵ Cf. H. ZATSCHKE, "Ein deutsches Vorbild für die mährische Urkundenschrift", *Zeitschrift für sudetendeutsche Geschichte* 2 (1938), pp. 176-182.

¹⁶ Especially recommended for the study of this phenomenon is the excellent work by J. PRAŽÁK. For a survey of his conclusions, cf. his "Rozšíření aktů v přemyslovských Čechách. K počátkům české listiny", in: *Collectanea opusculorum ad iuris historiam spectantium Venceslao Vaněček septuagenario ab amicis discipulisque oblata* (Prague, 1975), pp. 29-40.

¹⁷ Cf. Z. FIALA, "K otázce funkce našich listin do konce 12. století", *Sborník prací filozofické fakulty brněnské univerzity*, Series C, 7 (1960), pp. 5-29.

after the middle of the twelfth century, the bishop of Prague also wrote charters, as his confirmations of saints' relics for various village churches in Bohemia testify. This was a small beginning admittedly, but a beginning nonetheless.

In the second half of the century there was an on-going deepening of written legal proceedings and we may even infer the beginnings of a primitive chancery at the duke's court in Prague under Sobieslav II (1184-1188). The documentation allows us to infer that a chapter close to the Prague court (either the Prague cathedral chapter or the collegiate chapters of Vyšehrad or Lito-měřice) was ordered by the king. In particular, the Vyšehrad chapter and its provost were honoured by the king in 1225 with the powerful title of chancellor of the kingdom, which they kept until the fifteenth century. The service of a number of important monasteries to the "centre", e.g. the Cistercian monastery Plasy, should not be underestimated.

Although the production of charters was irregular during the second half of the twelfth century, partly due to political instability, the situation changed considerably with the reign of Přemysl I (1198-1230), although unlike the western situation, we must base this conclusion on single documents. I do not dare suggest how large the coefficient of loss might be. The average number of preserved royal charters a year (about 7) is something unheard of in the Bohemian situation until that day. The new situation is visible not only in the quantity, but also in the quality of the charters, which means first of all that the scale of recipients was considerably increased; they included not only churches but also the cities that were being established around this time. On the other hand, the variation in content also increased considerably, and not only economic privileges (in the broadest sense of the word), but also political matters were addressed. A more general use of writing was found in other areas of intellectual activities, such as the copying of literary works. We are only concerned here with legal documents, which become more systematic after this point. As schools were still limited mostly to internal monastery institutions and a very few external ones, to which both of the cathedral chapters of Prague and Olomouc belonged, and probably also the Vyšehrad collegiate, the number of people drafting or writing charters was fairly limited, since they had to be clerics.

We must conclude that it is still too early to speak of fully developed chanceries as existed in the late Middle Ages. Yet the early signs of such institutions should not be underestimated and must be taken seriously. The terminology of the various functions begins to show some delineation as well. As in the west, there was no clear separation between chancery officials and other members of the clergy at this time. If we take a brief look at the personal composition of this group of intellectuals, we see that their ethnic background tended gradually

towards the local element. It is true that this trend had several unexpected changes, primarily when the Bohemian kings took over other temporal offices and the competencies that came with them.

In the framework of this evolution we are able to see the accession of Přemysl II Ottokar as a watershed in the Přemyslide period for the central royal production of charters. When Přemysl became king of Bohemia, he maintained his Austrian and alpine titles and competencies, which not only increased his power, but also the need for more documents. As a result of his two main functions, the number of real and potential recipients was considerably augmented.¹⁸ Next to the Church and clergy which were the primary recipients, the cities were important, but also increasingly the nobility of all ranks. The non-political documents of the king also took a greater place. If today we have about 500 documents of Přemysl for a period of about 25 years, transmitted as originals and copies, it means that about 20 documents per year have been preserved. In connection with this, a number of questions arise, which need to be formulated at least partly; these include: 1) What is the proportion of documents produced and documents received? 2) Can we make any conclusions about possible stylistic models? 3) Were there other types of written texts at the time, especially legal records or books? 4) How were other charters created, which not in last instance means can we speak of the beginnings of a public notarial office?

As far as question 1 is concerned, the detailed research of J. Šebánek and Saša Dušková has clarified the situation for the first time. They have established that there was a relative balance between the two kinds of charter production, with comparable swings within single receiver groups. The secular group began to appear rather clearly, although they were not yet the dominant group. Let us look at the internal distribution of written documents in the two large areas of Přemysl II's realm, the Bohemian and alpine territories. Each had separate chancery offices with fairly independent personnel, which did assist one other however, that is to say that single chancery officials could lend a hand in the other office. A difference between the two is that in the alpine lands the documents produced outside the chancery were in the majority. The personalities whose names are mentioned are primarily connected with the most important churches of the land, however almost always by way of the royal chapel; already around this time this main centre was closely connected to the provost of Vyšehrad who held the title of Chancellor since 1225. He was mostly the formal head of the chancery; the second in command was the *protonotarius* who was really in charge and was always recruited from one of the most important collegiate churches: in addition to the Prague and Vyšehrad chapters

¹⁸ See *supra*, note 6.

which we have already mentioned, there was only the Litoměřice chapter which contributed to the group of “civil servants”. The temporary contribution of a number of monasteries (which is especially proven in the case of Přemysl II’s predecessor) must be also included in this number. This trend is also seen under Přemysl II’s successor Wenceslaus II (1283-1305). He no longer produced charters for Austria, but was king of Poland for five years and was therefore also responsible for charter writing in that country.¹⁹ The predominance of charters produced in the chancery is obvious in this case (the yearly average of known documents amounts today to about 12). And what is still more important is that in studying the formulas of his charters we notice the advancing chancery character.²⁰

As the number of charters to the recipients we have mentioned could lead to a certain bottleneck in the archives even by the end of the thirteenth century (due to their importance the originals were not always available for daily use in economic and legal matters), cartularies also appeared in Bohemia-Moravia; these had already proven their worth in the west for a long time. Although the only information we have for this period concerns the situation of the chapter at Olomouc, the presence of similar books at other Church institutions is not excluded. We will know more for sure once the medieval archive history of these institutions has been researched in detail.²¹

What we just said about the gradual appearance and establishment of a chancery-like situation is supported by another fact, which strikes me as being of great significance, namely the sudden appearance of formulary collections for various matters, the use of which quickly spread. Next to the proven foreign *Summae* and *Artes dictandi* from about the middle of thirteenth century especially the formula collection of Petrus of Vineia (the manuscript preserved in Olomouc belongs to the oldest of the not yet classified original series), there are also several collections of local origin, which are found in many fragments spread all over, also abroad.²² However, complete collections can be found. The

¹⁹ The foremost study on this matter to date is that of M. POJSL, I. ŘEHOLKA and L. SULITKOVÁ, “Panovnícká kancelář posledních Přemyslovců Václava II. a Václava III.,” *Sborník archivních prací* 24 (1974), pp. 261-364. For the “Poland-charters emission”, see J. ŠEBÁNEK, “Čeští notáři na cestě Václava II. za polskou korunou,” *SZC* 4 (1959), pp. 75-84.

²⁰ See V. VAŠKŮ, “K otázce individuálního stylu listin Václava II. a Václava III.,” *Sborník prací Filozofické fakulty brněnské univerzity*, Series C, 7 (1960), pp. 75-94.

²¹ See S. DUŠKOVA, “Naše listiny doby přemyslovské pronižší srětské feudály a otázka šlechtických archivů,” *Sborník prací Filozofické fakulty brněnské univerzity*, Series C, 3 (1956), pp. 56-78.

²² This is a broad and autonomous field of Bohemian diplomatics, which is not nearly as well researched as it should be. See D. TRĚŠTÍK, “Formularze czeskie XIII wieku”, with additions by J. ŠEBÁNEK in *Folia diplomatica* 12 (1963-1964), pp. 15 ff. and first probes of J. ŠEBÁNEK and

most important ones, to which the name of the *protonotarius* Henricus is attached, are perhaps of dual origin, that is to say they came about on the basis of actually prepared documents but were also destined for use in notarial schools, most likely in Vyšehrad. Not only the national centre, to which several manuscripts may be attributed, was involved but also other groups i.e. principally the office of the Prague bishop and not least of all the chancery of the Old town of Prague. Concrete connections between actually produced documents and formularies are not yet precise, though the first steps have already proven that these connections are as good as certain in several cases.²³

As for point 3, we must be restrained in our remarks, although there is fairly massive evidence elsewhere to suggest that the situation was extremely varied. The use of writing in Bohemia (apart from charters) concerns several areas of day-to-day legal and economic life. The old illusion about the existence of registers of the royal chancery, the so-called *registra regalia* of the formulary documentation, proved to be more than misleading, for they were not chancery registers, as it had been believed previously, but “tables”, i.e. public law books of the Bohemian land court, which was founded by Přemysl II as an institution of the free Czechs, that is to say the nobility and mostly for its free ownership of land. A fragment recording such a *causa* from 1287 in the Bayerisches Hauptstaatsarchiv in Munich confirms this otherwise isolated occurrence of the formulary we have just quoted. All the registry office of the Bohemian court fell victim to the devastating fire of the Prague Mala Strana and the Castle in 1541.²⁴

There are also other books and document materials at various levels of concentration and quantity, which have to be mentioned at least briefly, without discussing them at length, if only for the reason that much seems only indirectly proven. That is especially true for the economic documents, especially in two areas, the central secular and religious groups, in other words the royal court and the bishop or the monasteries. For the royal court we find several single accounts at least which appear in the documents sometimes and to which there are rather accidental references; these give financial information about individual court officials, although unfortunately we do not learn anything new. We are a little better informed about the Church, although here again we only

S. DUŠKOVÁ (bibliography in: *Výbor studií k Českému diplomatáři*); cf. *supra*, note 6.

²³ In particular, the study by S. DUŠKOVÁ, “Formulář Tobiáše z Bechyně ve světle listin pražských biskupů”, *Sborník prací Filozofické fakulty brněnské univerzity*, Series C, 12 (1965), pp. 53-71.

²⁴ For this there is also a fairly extensive literature. I refer only to Z. FIALA, “Panovnícké listiny, kancelář a zemský soud za Přemysla II. (1247-1253-1278)”, *Sborník archivních prací* 1.1 (1951), pp. 279 ff.

have the “tip of the iceberg”. There is a small document, for instance, a really rather curiously preserved bit of the *Urbar* (holdings book) of the bishop of Prague shortly before the middle of the 1280s; if we examine the writing we find that it was kept by a diocesan chancery official.²⁵ What I want to say by this is that at the time, in all probability, there was no independent financial office functioning at the bishop’s curia, as later was the case, and if so, it made use of the chancery services. Since the structure of this product is rather developed, although the form of the shorter so-called *Evidenzurbar* was chosen, we have to assume that there must have existed more primitive predecessors. And indeed we do have proof in the form of a private south Bohemian institution, the Cistercian monastery Vyšší Brod, which allows us to assume that an *Urbar* also existed there around 1280.²⁶ Around 1300 an inventory was made of the records of the oldest men’s monastery of Bohemia, Břevnov; the considerable fragment of which we still have today evidences economic as well as spiritual material (various manual instruments as well as books).²⁷

However, the cities also began to stick their heads up, at first fairly reticently. From the time of Přemysl II they appear not only as document recipients, but more and more intensively as the producers of charters; and several cities started to set up the beginnings of chanceries.²⁸ They did not only produce charters but also books. There is no agreement about whether a formulaic phrase from the final years of the thirteenth century indicates a city book in the true sense of the word or a *Liber imbreuiaturarum* in the service of the Old town of Prague.²⁹

One thing is clear: in all these cases we find fragments or information that may be in itself unimportant. But from this we may conclude that at the time there almost surely were not only several products of this kind, produced continuously perhaps, along with the above-mentioned legal entities, but that most likely these types of document were found in several comparable institutions in the land as well. Even more, these accidents of tradition show that several other kinds of written material must have existed, or at least may be assumed already

²⁵ See R. NOVÝ, “Nejstarší český urbář z let 1283-1284”, *Československý časopis historický* 8 (1960), pp. 210-227.

²⁶ See J. ČECHURA, “Nejstarší český urbář”, *Právní historické studie* 27 (1986), pp. 5-26.

²⁷ *Regesta diplomatica ... Bohemiae*, ed. EMLER, No. 2752.

²⁸ Cf. ŠEBÁNEK and DUŠKOVÁ, “Česká listina”.

²⁹ On the old controversy concerning the public notarial office, see I. HLAVÁČEK, “Das öffentliche Notariat in den böhmischen Ländern von den Anfängen bis zu der hussitischen Revolution”, in: *Notariado público y documento privado: de los orígenes al siglo XIV: Actas del VII Congreso Internacional de Diplomática, Valencia 1986*, 2 vols. (Valencia, 1989: *Papers i Documents* 7), 2, pp. 1179 ff.

in the late Přemyslide period, about which we only have knowledge in the Luxembourg period. This does not mean that the chances of survival for material from the fourteenth century are satisfactory. There too much is guesswork and the available material is fragmentary. That however is another chapter, which we cannot go into here.

Part III: Preserving Charters

Originals and Cartularies: The Organization of Archival Memory (Ninth-Eleventh Centuries)

GEORGES DECLERCQ

All through the Middle Ages, charters and diplomas, recording mainly the transfer of land and the granting of privileges, played an important role as proof of right or of ownership. Institutions as well as individuals therefore had a clear interest in preserving (and safeguarding) the formal titles to the privileges and the properties with which they were endowed. Hence the organizing of archives, or what are known as “charter treasuries”, in which these legal instruments were kept for juridical and administrative purposes. Medieval archives were, however, more than mere repositories destined to serve immediate practical needs. They also formed a vital part of the memory of the institution or the family concerned, preserving the names of patrons or benefactors as well as the deeds of bishops, abbots or ancestors. Apart from obvious legal and administrative concerns, the organization of a collection of property records and title deeds therefore also involved historical and commemorative considerations. In this paper I will focus on the way the preservation of charters and diplomas was organized between the ninth and eleventh centuries, particularly in the Carolingian empire and its successor states. Not only did archival memory undergo a profound transformation during this period with the introduction of cartularies and other types of copybooks, but the nature and the use of the documents themselves changed considerably in the course of these three centuries. The period began with the decay of the late-Roman *carta* and ended with the emergence of the sealed charter. Moreover, it was a period in which many property transactions did not result in the drafting of a formal

charter but were recorded instead as often short and more or less informal notices. Finally, the period from the ninth to the eleventh centuries was also characterised by the growing dominance of ecclesiastical beneficiaries on charter production in much of Western Europe.¹

Today, only fragments of the archival memory of the early Middle Ages remain. The losses are particularly important with regard to the originals, i.e. single sheets of parchment written at the time of the legal action. North of the Alps, only the well-known collection of originals (and early copies) for the abbey of St. Gall, which contains some 839 documents from before 920—the vast majority of which being private charters—has survived largely intact.² Apart from this notable exception, however, original charters dating from the Frankish period are nothing but scarce remnants, and most of them concern royal and imperial diplomas. Of the 448 originals prior to 900 preserved for the whole territory of present-day France, no less than some 350 documents belong to the latter category.³ In Italy the situation is better, as several archives contain hundreds, mainly private charters from before the turn of the first millennium. By far the largest extant collection of originals from early medieval Europe is that of the cathedral of Lucca, which contains some 1800 charters for the period between 685 and 1000.⁴ Elsewhere in Western Europe, our knowledge of the charter evidence from the early Middle Ages relies to a large extent upon cartularies and *Traditionsbücher*, i.e. books (and in a few cases rolls) in which the privileges and property records of an institution were copied. Cartularies primarily consist of integral copies of formal charters drafted in the first person (“*Ego x dono*”), whereas *Traditionsbücher* or *libri traditionum* contain for the most part less formal notices that were usually drafted in the third person (“*x tradidit*”). Such compilations appear in the ninth century, and 80 or so ex-

¹ For a brief survey of the transformation of the charter evidence between the ninth and eleventh centuries, see O. GUYOTJEANNIN, J. PYCKE and B.-M. TOCK, *Diplomatique médiévale* (Turnhout, 1993: *L'atelier du médiéviste* 2), pp. 103-118.

² Some 130 charters prior to 800 were published by A. BRUCKNER and R. MARICHAL, *Chartae Latinae Antiquiores: Facsimile-Editio of the Latin Charters Prior to the Ninth Century* 1-2 (Olten and Lausanne, 1954-1956), Nos. 40-171. For a complete list of all charters up to 920, see M. BORGOLTE, “Kommentar zu Ausstellungsdaten, Actum- und Güterorten der älteren St. Galler Urkunden”, in: *Subsidia Sangallensia 1: Materialien und Untersuchungen zu den Verbrüderungsbüchern und zu den älteren Urkunden des Stiftsarchivs St. Gallen*, ed. M. BORGOLTE, D. GEUENICH and K. SCHMID (St. Gall, 1986), pp. 330-459. On this collection, cf. R. MCKITTERICK, *The Carolingians and the Written Word* (Cambridge, 1989), pp. 77-131.

³ Numbers based on D. GANZ and W. GOFFART, “Charters earlier than 800 from French collections”, *Speculum* 65 (1990), p. 907, and on the photographic collection of the ARTEM at Nancy.

⁴ See the oldest charters in *Chartae Latinae Antiquiores* 30-40 (Dietikon and Zurich, 1988-1991), Nos. 894-1185.

amples from the period before 1100 are known. Nearly all of these early copybooks come from regions that were part of the Frankish kingdoms: 36 cartularies and *libri traditionum*, among them the oldest, originated in the eastern parts of Francia, principally in Bavaria and present-day Austria; 35 others, most of them dating from the eleventh century, come from western Francia, mainly from the western and southern regions of present-day France.⁵ The motives behind the production of cartularies and *Traditionsbücher* were both administrative and historical, legal and commemorative, for the context of such copybooks was at least as much that of institutional identity and the preservation of memory as that of convenient consultation and the defense of property rights.⁶ Arguably, as Patrick Geary has rightly stressed, these multiple functions, in particular the emphasis by some compilers on their historical and memorial role, “greatly affected the form of these collections, as well as the principles of inclusion and exclusion of their contents.” Rather than being a witness to the state of a church’s archives at the time of its compilation, each cartulary should therefore be seen as “the result of a process of neglect, selection, transformation and suppression”, which could involve reworking and editing in a variety of ways (summarizing or shortening, stylistic alteration or amplification, and in some cases even interpolation or falsification).⁷

The available evidence shows that the chances of survival for the originals of private charters were not the same as those for the originals of royal or imperial diplomas. The vast majority of the charter evidence from before 1100 has been preserved in one of two forms only: either as originals, or, as is more often the case, as copies in early cartularies and *Traditionsbücher*. Where a copy exists, the original is usually lacking, and vice versa. Royal and imperial diplomas, however, appear to be exceptions to this rule, as examples where both the original and an early cartulary copy have survived are not uncommon, and in several other cases we know that the original was only lost after the Middle Ages as a result of man-made catastrophes. In the case of private charters, the

⁵ Tentative figures based on a preliminary survey of all cartularies and copybooks earlier than 1100.

⁶ On these multiple functions, see H. FICHTEAU, *Das Urkundenwesen in Österreich vom 8. bis zum frühen 13. Jahrhundert* (Vienna, 1971), pp. 83-84; P. JOHANEK, “Zur rechtlichen Funktion von Traditionsnotiz, Traditionsbuch und früher Siegelurkunde”, in: *Recht und Schrift im Mittelalter*, ed. P. CLASSEN (Sigmaringen, 1977: *Vorträge und Forschungen* 23), pp. 146-152; Th. KÖLZER, “Codex Libertatis: Überlegungen zur Funktion des ‘Regestum Farfense’ und anderer Klosterchartulare”, in: *Atti del 9° Congresso Internazionale di Studi sull’Alto Medioevo* (Spoleto, 1983), 2, pp. 633-653; S. MOLITOR, “Das Traditionsbuch: Zur Forschungsgeschichte einer Quellengattung und zu einem Beispiel aus Südwestdeutschland”, *AFD* 36 (1990), pp. 72-87.

⁷ P.J. GEARY, *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millennium* (Princeton, 1994), pp. 81-107 (the quotations are from pp. 83 and 86).

situation is generally quite different. Of the 147 charters and notices copied around 1075 in a cartulary at the abbey of Marmoutier, only 16 survive as originals.⁸ The two *libri traditionum* of St. Peter's abbey at Gent, compiled in the tenth and eleventh centuries, contain summaries of 202 private charters from the seventh to the eleventh centuries, but only 10 of these have been preserved in the form of originals or apparent originals.⁹ Elsewhere, the situation is even worse. The originals of the great collections of private charters assembled in the ninth-century cartularies of Fulda, Freising, Mondsee, Regensburg and Wissembourg, some 3500 documents in all, have disappeared in their entirety. Most of these losses appear to originate in the Middle Ages. In the abbey of Fulda, the overwhelming majority of the roughly 2000 documents included in the cartulary written around 828 had apparently already disappeared by the middle of the twelfth century, and only one of those charters can still be traced in a late fifteenth-century inventory of the abbey's archives.¹⁰ Several scholars, including Edmund Stengel and Patrick Geary, have therefore suggested that the copying of private charters in cartularies and *libri traditionum* between the ninth and eleventh centuries generally led to the complete neglect and ultimately the disappearance or maybe even the destruction of the originals.¹¹ On the other hand, Albert Bruckner was probably right when he supposed that the survival of the large collection of originals in St. Gall was connected to the fact that this abbey managed without a cartulary all through the Middle Ages.¹²

The discrepancy between royal diplomas and private charters as to their chances of survival is no coincidence, of course, for the distinction between the two categories of documents was fundamental in the early Middle Ages. The

⁸ D. BARTHÉLEMY, *La société dans le comté de Vendôme de l'an mil au XIV^e siècle* (Paris, 1993), pp. 21 and 84-88; cf. D. BARTHÉLEMY, "Note sur les cartulaires de Marmoutier (Touraine) au XI^e siècle", in: *Les cartulaires: Actes de la table ronde organisée par l'École Nationale des Chartes*, ed. O. GUYOTJEANNIN, L. MORELLE and M. PARISSÉ (Paris, 1993), p. 254.

⁹ G. DECLERCQ, "Le classement des chartriers ecclésiastiques en Flandre au moyen âge", *Scriptorium* 50 (1996), p. 343.

¹⁰ E.E. STENGEL, "Über die karolingischen Cartulare des Klosters Fulda", *Archiv für Urkundenforschung* 7 (1921), pp. 20-22.

¹¹ E.E. STENGEL and O. SEMMELMANN, "Untersuchungen zur Frühgeschichte des Fuldaer Klosterarchivs", *AfD* 4 (1958), pp. 160 and 168; GEARY, *Phantoms of Remembrance*, pp. 82 and 180. See also O. REDLICH, *Die Privaturkunden des Mittelalters* (Munich and Berlin, 1911), pp. 78-79 and 82; DECLERCQ, "Le classement", pp. 343-344; M. PARISSÉ, "Écriture et réécriture des chartes: Les pancartes aux XI^e et XII^e siècles", *BEC* 155 (1997), p. 256. For a critical assessment of this assumption: L. MORELLE, "Histoire et archives vers l'an mil: Une nouvelle 'mutation'?", *Histoire et Archives* 3 (1998), pp. 128-132.

¹² A. BRUCKNER, "The diplomatic of early Alemannian Charters", in: *Chartae Latinae Antiquiores*, 2, p. VII; A. BRUCKNER, *Paläographische Studien zu den älteren St. Galler Urkunden* (Turin and St. Gall, 1937), p. 18.

famous formulary of Marculf, written around 700, for example, is divided into two sections, devoted respectively to the “*preceptiones regales*” and the “*cartas pagenses*”.¹³ The royal diplomas, with their solemn lay-out, their royal subscription or monogram and above all their royal seal, were legally authentic in the fullest sense of the word, and their authority was in principle absolute (or “*unscheltbar*” as the German diplomatists use to say), which means that they could only be challenged in court by another royal diploma (or if they were proven to be forgeries). The modest and unsealed private charters, often written on small scraps of parchment, were—with the notable exception of Italy—dependent for their authentication to a large extent upon the names of the witnesses mentioned in them, and their use in court proceedings was generally—again with the exception of Italy—accompanied by other methods of proof.¹⁴

This fundamental distinction between royal *preceptum* and private *carta*, based essentially on a difference in evidential value, was also mirrored in the way the archival memory was organized. On the basis of the ninth-century archival notations endorsed on the originals of St. Gall, it can more specifically be assumed that the early medieval archives of this abbey were divided into two sections: one for the royal diplomas and other important documents (papal privileges), and another for the private charters.¹⁵ According to Arnold of St. Emmeran, who lived in the first half of the eleventh century, the collection of charters in his abbey at Regensburg was equally classified into royal and ducal privileges on the one hand and private *traditiones* on the other.¹⁶ A similar division apparently also existed in the abbeys of Cluny and St. Peter’s Gent in the eleventh century, although by that time (and in those regions) the ancient distinction between royal and private charters began to become somewhat problematic¹⁷. In the abbey of Fulda, too, the royal diplomas and the papal privi-

¹³ A. UDDHOLM, *Marculfi formularium libri duo* (Uppsala, 1962).

¹⁴ On this difference in evidential value between diplomas and private charters, see in general A. GAWLIK, “Beweiskraft (der Urkunden)”, *LdM* 2, col. 31-32.

¹⁵ The early medieval archival notations on the St. Gall originals have been edited by O.P. CLAVADETSCHER and P. STAERKLE, *Die Dorsualnotizen der älteren St. Galler Urkunden: Faksimile-Ausgabe* (St. Gall, 1966). On the organization of the archives in the ninth century: P. STAERKLE, *Die Rückvermerke der älteren St. Galler Urkunden* (St. Gall, 1966), pp. 30-71 (private charters) and 72-83 (royal and imperial diplomas).

¹⁶ GEARY, *Phantoms of Remembrance*, pp. 170-172.

¹⁷ In both cases this can be inferred from the different systems of endorsing diplomas and private charters. The medieval archival notations on the Cluny originals are reproduced by H. ATSMAN and J. VEZIN, *Les plus anciens documents originaux de l’abbaye de Cluny*, 1 (Turnhout, 1997: *Monumenta Paleographica Medii Aevi: Series Gallica*). The letters which have been written as archival marks on the back of the private charters probably date from the eleventh century; see GUYOTJEANNIN, PYCKE and TOCK, *Diplomatique médiévale*, p. 182. For St. Peter’s of Gent, cf.

leges were kept separately from the rest of the archives. They were organized in two series, each of which was ordered chronologically, as is shown by an inventory compiled shortly before 1069 and listing 26 papal *privilegia* as well as 29 royal and imperial *precepta*.¹⁸ For the often quite numerous private charters recording property rights, a topographical organization must have looked more appropriate, so as to assist the internal administration of a church's estates. At St. Gall an elaborate ordering on geographical principles was introduced around 840 for the vast collection of private charters, as can be deduced from the Roman numerals with which most of them were endorsed. Presumably, these numbers, running from I (the region around St. Gall) to XXXVI (the Nibelgau), correspond with the different administrative entities into which the estates of the abbey were divided at the time.¹⁹ Such an organization of the private charters from a geographical point of view also existed in Marmoutier in the second half of the eleventh century.²⁰ Elsewhere the original charters were classified on a chronological basis, even though this may seem rather unpractical from an administrative perspective. An inventory of the charters of the abbey of St. Riquier from 1098 shows that, except for the Carolingian diplomas, the documents were arranged chronologically by abbot.²¹ A similar system may have been used in the abbey of Fleury around 1000,²² while in the Gent St. Peter's abbey a classification of the private charters by king's reign was apparently introduced in the second quarter of the eleventh century.²³

The organization of the originals is reflected, at least to a certain extent, in the early cartularies. In the ninth century and in most regions also in the tenth century, there is a clear distinction between cartularies containing exclusively private charters and notices on the one hand, and copybooks or rolls into which royal diplomas and papal privileges were copied on the other. In most cases, the latter were not systematic collections of all the solemn privileges of an institution, but rather ad hoc dossiers offering a selection of diplomas and privileges related to specific issues. These collections could be gathered either in pursuit of legal claims during a dispute with a rival institution, such as, for example,

DECLERCQ, "Le classement", pp. 333-334.

¹⁸ STENGEL and SEMMELMANN, "Untersuchungen", pp. 146-153.

¹⁹ STAERKLE, "Die Rückvermerke", pp. 54-71; cf. A. BRUCKNER, "Die Anfänge des St. Galler Stiftarchivs", in: *Festschrift Gustav Binz* (Basel, 1935), pp. 126-131.

²⁰ BARTHÉLEMY, "Note sur les cartulaires de Marmoutier", pp. 251-252.

²¹ L. MORELLE, "Les chartes dans la gestion des conflits (France du Nord, XI^e-début XII^e siècle)", *BEC* 155 (1997), pp. 268-276; MORELLE, "Histoire et archives", pp. 130 and 136.

²² MORELLE, "Histoire et archives", p. 136 note 44.

²³ See the dorsal notations on several charters from the ninth-eleventh centuries: M. GYSSELING and A.C.F. KOCH, *Diplomata Belgica ante annum millesimum centesimum scripta* 1 (Brussels, 1950), Nos. 50, 51, 57-58, 62, 68 and 80; cf. DECLERCQ, "Le classement", pp. 333-334.

the so-called cartulary compiled by the monks of St. Calais in 863 during their conflict with the bishop of Le Mans;²⁴ or to obtain a confirmation of earlier privileges, as seems to be the case with the cartulary of bishop Radbod in Utrecht from 914²⁵ and the *rotulus* of bishop Dagibertus in Novara from 925.²⁶ Similar collections are known from Corbie, Salzburg and Arezzo in the ninth century²⁷ and from Fulda, Prüm, Corvey and Stavelot in the tenth.²⁸ The practice of making such dossiers also continued in the eleventh century, as is shown by the “cartularies” compiled by the monks of St. Denis and Corbie in the course of their disputes with their respective bishops around 1065.²⁹ This type of copybook, which often contained diplomas and privileges that were interpolated or forged for the occasion, was thus clearly known throughout the (former) Carolingian empire.

A quite different picture emerges when we look at the cartularies into which at first only more or less integral copies of private charters, and then increasingly less formal notices, were gathered. These compilations were limited in the ninth and tenth centuries to different regions of eastern Francia. The first examples of such collections come from the abbey of Fulda (*ca.* 828) and

²⁴ W. GOFFART, *The Le Mans Forgeries: A Chapter from the History of Church Property in the Ninth Century* (Cambridge, Mass., 1966), pp. 321-326 (Appendix B: “The textual transmission of the cartulary of St. Calais”).

²⁵ P.A. HENDERIKX, “The Lower Delta of the Rhine and the Maas: Landscape and Habitation from the Roman Period to c. 1000”, *Berichten van de Rijksdienst voor het Oudheidkundig Bodemonderzoek* 36 (1986), pp. 543-544 (Appendix III: “The property list of the Church of Utrecht”).

²⁶ B.H. ROSENWEIN, “The family politics of Berengar I, King of Italy (888-924)”, *Speculum* 71 (1996), pp. 281-286 (Appendix 2: “The ‘Rotulus’ of Novara”).

²⁷ Corbie: L. LEVILLAIN, *Examen critique des chartes mérovingiennes et carolingiennes de l'abbaye de Corbie* (Paris, 1902), pp. 13-15 (the date proposed, i.e. the late tenth century, must be corrected; cf. MORELLE, “Histoire et archives”, p. 129); Salzburg: FICHTEAU, *Das Urkundenwesen in Österreich*, p. 97; Arezzo: C. BRÜHL, *Studien zu den langobardischen Königsurkunden* (Tübingen, 1970), pp. 96-98.

²⁸ Fulda: STENGEL and SEMMELMANN, “Untersuchungen”, pp. 161-162; Prüm: M. WILLWERSCH, *Die Grundherrschaft des Klosters Prüm*, ed. I. SCHWAB and R. NOLDEN (Trier, 1989), pp. 1-4; Corvey: H.H. KAMINSKY, *Studien zur Reichsabtei Corvey in der Salierzeit* (Cologne and Graz, 1972), p. 174 and H. MORDEK, *Bibliotheca capitularium regum Francorum manuscripta: Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse* (Munich, 1995: MGH Hilfsmittel 15), pp. 378-386; Stavelot: H. HOFFMANN, *Bamberger Handschriften des 10. und 11. Jahrhunderts* (Hannover, 1995: MGH Schriften 39), pp. 138-139 and Th. KÖLZER, *Mero-wingerstudien I* (Hannover, 1998: MGH Studien und Texte 21), pp. 3-10.

²⁹ L. LEVILLAIN, “Études sur l'abbaye de Saint-Denis à l'époque mérovingienne, III: ‘Privilegium’ et ‘immunitates’ ou Saint-Denis dans l'église et dans l'état”, *BEC* 87 (1926), pp. 245-346; on the numerous forgeries in this dossier, cf. GEARY, *Phantoms of Remembrance*, pp. 107-111; L. MORELLE, “Moines de Corbie sous influence sandionysienne: Les préparatifs corbéiens du synode romain de 1065”, in: *L'église de France et la Papauté (X-XIII^e siècle): Actes du XXVI^e colloque historique franco-allemand*, ed. R. GROSSE (Bonn, 1993), pp. 197-218.

the bishopric of Freising (*ca.* 830). In its original form, the Fulda cartulary, prepared under the abbacy of Hrabanus Maurus (822-842), contained some 2000 charters—for the most part donations and precarial grants—, divided over fifteen booklets.³⁰ In Freising, the priest Cozroh working under the direction of bishop Hitto (811-835), collected 600 or so charters of donation (*traditiones*) into one volume, which was continued by himself to 848 and by others through the episcopates of Erchanbert (836-854) and Anno (854-875). In the late ninth century, a second cartulary containing charters of exchange (*commutationes*) was begun, apparently at the initiative of bishop Waldo (883-906).³¹ Other ninth-century cartularies of the same type have been preserved for the abbeys of Mondsee (after 854), Wissembourg (855-860) and Werden (after 848), as well as for the bishoprics of Regensburg (822-847 and *ca.* 891) and Passau (*ca.* 840).³² Some of these early copybooks were one-off affairs that were never updated (Werden, Wissembourg, Mondsee); others were continued on an irregular basis (Passau, Fulda), while still others systematically received additional material, thus forming the starting-point of a continuing program of copying charters and notices (Freising, Regensburg). In most of these copybooks, the charter material is ordered geographically, the exception being the cartulary of Freising, where the private charters are grouped chronologically by bishop's reign. In the cartulary of Fulda both systems were combined: the charters were organized in fifteen booklets, each of which was devoted to a particu-

³⁰ E.E. STENGEL, *Urkundenbuch des Klosters Fulda* 1 (Marburg, 1958), pp. XVIII-XXVIII; STENGEL, "Über die karolingischen Cartulare", pp. 1-46. Today only fragments of this cartulary survive (see *infra*, note 33), but its original content can be reconstructed from a summary made in the middle of the twelfth century.

³¹ *Tr Freising* 1. In its present form the first cartulary or *Liber traditionum* contains charters up to 848-849. That it originally also covered the period 849-875 can be inferred from a copy of this cartulary made around 1187 which systematically refers to the *Liber traditionum* for the names of the witnesses that were entirely omitted. Fragments of this continuation, containing charters from 851 to 861, are now bound with the manuscript of the second cartulary or *Liber commutationum*; see *Tr Freising* 2, pp. XXXII-XXXV. For these fragments, and the Carolingian cartularies of Freising in general, cf. B. BISCHOFF, *Die südostdeutschen Schreibschulen und Bibliotheken in der Karolingerzeit* 1 (Wiesbaden, 1960), pp. 112-113 and 128-129.

³² Most of these early cartularies, including those of Fulda and Freising, are discussed by GEARY, *Phantoms of Remembrance*, pp. 87-100. See also P. GEARY, "Entre gestion et gesta", in: *Les cartulaires*, pp. 13-26. For Werden: D.P. BLOK, *Een diplomatisch onderzoek van de oudste particuliere oorkonden van Werden* (Assen, 1960), esp. pp. 11-20. Editions respecting the internal organization of the cartulary exist only for Mondsee and Wissembourg: *Das älteste Traditionsbuch des Klosters Mondsee*, ed. G. RATH and E. REITER (Linz, 1989: *Forschungen zur Geschichte Oberösterreichs* 16); *Traditiones Wizenburgenses: Die Urkunden des Klosters Weissenburg 661-864*, ed. K. GLÖCKNER and A. DOLL (Darmstadt, 1979).

lar region or “*Gau*”, whereas within the various booklets the ordering was generally chronologically by abbot.³³

The choice of a chronological ordering tends to emphasize the commemorative role of a cartulary over its practical functions, but this does not necessarily imply that a cartulary with such a structure should be seen first and foremost as a memorial text.³⁴ In fact, as argued above, all early cartularies served both utilitarian and commemorative purposes. In the introduction to the Freising cartulary, its author, Cozroh, certainly mentions the importance of preserving the *memoria* of the church’s benefactors first among the different motives that guided his work, immediately followed by the preservation of the memory of the transactions themselves.³⁵ However, as Heinrich Fichtenau pointed out, in reality the memorial function may have taken only second or third place,³⁶ and this interpretation is confirmed by the far greater attention Cozroh devoted to the practical purposes of his cartulary. The main concern of bishop Hitto (811–835), who took the initiative for the compilation, was, so it seems, in the first place to provide greater security for the records of donations and other transactions in favour of his church, some of which had been lost through the carelessness of the archivists, while others had even been stolen by outsiders or by “false brethren” in an attempt to alienate church property. He therefore ordered Cozroh to gather the charters in a rational manner (“*rationabiliter*”) into a single volume so as to facilitate their consultation.³⁷ The rational organization

³³ By the twelfth century, these fifteen booklets were combined into eight volumes, of which only one, containing three booklets (Alsace, Wormsgau, Rheingau-Nahegau), has survived in original. A second volume, also consisting of three booklets (Saalegau, Aschfeld-Werngau, Grabfeld) is known through an edition published in 1607. For a survey of the internal organization of both volumes, see STENGEL, “Über die karolingischen Cartulare”, pp. 30–36. On fragments of the booklets for Thuringia, Grabfeld and Saxony that have since been discovered as *membra disiecta*, see E.E. STENGEL, “Fragmente der verschollenen Cartulare des Hrabanus Maurus”, *AfD* 2 (1956), pp. 116–124 and W. HEINEMEYER, “Ein Fragment der verschollenen karolingischen Cartulare der Abtei Fulda”, *AfD* 17 (1971), pp. 126–135.

³⁴ GEARY, *Phantoms of Remembrance*, pp. 93–94 takes a somewhat different view.

³⁵ *Tr Freising* 1, p. 1: “*ut in perpetuum permaneret eorum memoria, qui hanc domum suis rebus ditaverunt et hereditaverunt; seu quicquid pro remedio animarum suarum ad ipsam domum tradiderunt et condonaverunt*”.

³⁶ FICHTEAU, *Das Urkundenwesen in Österreich*, p. 83.

³⁷ *Tr Freising* 1, pp. 1–2: “*Maxime quia repperit scriptura testimoniorum et confirmationum, quae iam olim fidelium devotione firmiter fuerunt peractae, alia oblivioni tradita, alia invidorum insidiis direpta, seu etiam per eductionem perditae, nec non per incuriam custodum abiecta ... Idcirco ad diversos labores evitandos, et falsidicorum ora recludenda, quicquid singulis cartulis exaratum certisque testimoniis confirmatum invenit, uno volumine rationabiliter includere studuit tam antecessorum patrum temporibus quam etiam sui famosi regiminis, ut eo facilius se legentium optutibus panderent, quo etiam rationabilius ordinantur*”. On Cozroh’s preface, see also GEARY, *Phantoms of Remembrance*, pp. 95–96.

chosen by Cozroh to make the archival memory of Freising more accessible consists of grouping the charters by episcopate in two books, the first devoted to Hitto's predecessors and the second to Hitto himself, each of which was introduced by a table of contents identifying each document by a short title that is probably based on the archival notation on the back of the originals.³⁸ It may, in my opinion, therefore not be excluded that Cozroh opted for a chronological structure for his compilation simply because the original charters and notices were already ordered by bishop's reign in the archives. However that may be, in the tenth century the chronological ordering became the norm in all East Frankish compilations, as the cartularies gradually evolved into *Traditionsbücher* that were regularly updated. This transition, which can best be followed in Freising and in Regensburg, where a more or less continuous series of copy-books have survived from the ninth through to the eleventh centuries,³⁹ was essentially the result of the gradual disappearance of the subjective *carta* in these regions and its ultimate replacement by the less formal and objective *notitia*.⁴⁰

In the West, the practice of making systematic collections of the property records of an institution in the form of cartularies had hitherto been unknown. Here, the emphasis in the ninth and tenth centuries lay on the organization of

³⁸ *Tr Freising* 1, pp. 2-20. The wording of these titles ("*Traditio x ad y*") is generally very similar to that of the early medieval archival notations on the originals for St. Gall; see CLAVADETSCHER and STAERKLE, *Die Dorsualnotizen*.

³⁹ *Tr Freising* 1-2; J. WIDEMANN, *Die Traditionen des Hochstifts Regensburg und des Klosters S. Emmeran* (Munich, 1943).

⁴⁰ This is the traditional opinion; see REDLICH, *Die Privaturkunden*, pp. 80-81 and MOLITOR, "Das Traditionsbuch", pp. 64-68 and 70-71. GEARY, *Phantoms of Remembrance*, p. 98, however, thinks that it is better to see two traditions: summary notices which both antedate cartularies and would outlive them on the one hand, and cartularies in which integral copies were made on the other; both existed from the early ninth century onwards, but one tradition, that of the cartulary, according to Geary disappeared in the course of the tenth century. The notices to which he refers are included in the *Notitia Arnonis* (788) and the *Breves Notitiae* (798-814), two collections of summaries prepared by the Church of Salzburg shortly after the Carolingian takeover of Bavaria, in order to defend previous donations by the Bavarian dukes and their contemporaries. There is, in my opinion, a fundamental difference between those notices and the short notices that later occur in the *Traditionsbücher*: the former seem to be summaries of formal charters, whereas the latter were records in their own right made during or shortly after a property transfer. Moreover, as FICHTEAU, *Das Urkundenwesen in Österreich*, pp. 81-82 has emphasized, the *Breves Notitiae* are not "summary notices", but rather "notices in the form of a *breve* or inventory", which can be compared to the series of notices concerning the precarial grants and the benefices of the abbey of Wissembourg in the *Brevium Exempla*. On the Salzburg collections as well as on similar inventories drawn up for the same reason in the late eighth century at Niederaltaich, Passau and Benediktbeuern, see H. WANDERWITZ, "Quellenkritische Studien zu den bayerischen Besitzlisten des 8. Jahrhunderts", *DA* 39 (1983), pp. 27-84.

originals, and the only type of copybook used was that of the ad hoc dossier of diplomas and privileges. Nevertheless, it is in western Francia that from the middle of the tenth century onwards a new type of cartulary began to develop that contained both royal and non-royal documents. The oldest examples of such copybooks, and at the same time the earliest cartularies outside eastern Francia, can be found in Flanders around the middle of the tenth century, in the context of the monastic reform movement of Gerard of Brogne, namely at St. Peter's Gent around 945 and at St. Bertin around 961. Both of these are historical or commemorative cartularies that were more or less influenced by the tradition of the *gesta abbatum* or *gesta episcoporum*, of which several ninth-century examples from western Francia are known.⁴¹ This is particularly clear in the case of the "chronicle cartulary" of St. Bertin composed by Folcuinus, which—according to the epilogue—was conceived of both as a history of the deeds of the abbots and as a copybook in which the charters and diplomas were ordered chronologically in order to facilitate their consultation.⁴² The difference between the work of Folcuinus and earlier *gesta* is that in St. Bertin the copies of documents—17 diplomas and 29 private charters—dominate the narrative, whereas until then copies, extracts or summaries of charters were only inserted as *pièces justificatives*.⁴³ In Gent, the compiler of the *Liber Traditionum Antiquus* was apparently directly influenced by the *Gesta abbatum Fontanellensium*, for he used this work, among other things, for the opening phrase of the

⁴¹ On this genre, see M. SOT, *Gesta episcoporum, Gesta abbatum* (Turnhout, 1981: *Typologie des sources du moyen âge occidental* 37).

⁴² B. GUÉARD, *Cartulaire de l'abbaye de Saint-Bertin* (Paris, 1841). This important text is badly in need of a new edition. The best edition of the charters is that by GYSSELING and KOCH, *Diplomata Belgica*, 1, pp. 5-83. For the narrative parts, see *Folcwini diaconi gesta abbatum Sithiensium*, ed. O. HOLDER-EGGER (Hannover, 1881: *MGH SS* 13), pp. 607-635 (at p. 632 the epilogue with the rationale of the whole undertaking: "Explevi iam, auxiliante Domino, quae iusseras, domine et beatissime necnon et amantissime pater Adalolfe, comprehendens in uno codice traditiones fidelium cum kartis earum necnon et gesta abbatum ab ipso primo loci huius structore domno Bertino abbate usque ad ultimum, qui nunc preest nostrae aetatis tempore"; the prologue on p. 608 explains the convenience of chronological order: "hunc tantummodo codicem de membranulis in unius libri cumulavimus corpus, ut, si forsitan quis istius loci possessionum investigandorum fuerit avidus, ad hunc recurrat; ibi numerum et nomina invenire poterit quantocius sub pretitulatione annorum dominicae nativitatis vel tunc temporis cuiuslibet regis abte coniunctum"). On this collection, see K. UGÉ, "Creating a usable past in the tenth century: Folcuin's 'Gesta' and the crises at Saint-Bertin", *Studi Medievali*, 3a serie 37 (1996), pp. 887-903; cf. GEARY, *Phantoms of Remembrance*, pp. 102-103.

⁴³ Cf. SOT, *Gesta episcoporum*, pp. 27-28. The *actus* and *gesta* of the bishops of Le Mans (832-863) are a case in point, for they contain no less than 86 charters and diplomas, many interpolated or forged; see GOFFART, *The Le Mans Forgeries*, esp. the critical survey of the charters at pp. 255-320.

historical introduction (or *ratio foundationis*) on the origins and the first abbots of St. Peter's abbey which prefaced his own work. The private charters in this compilation, arranged in a broadly chronological order by king's reign (and in separate sections for the transfers of land and those of *mancipia*), are summarised into short notices, but an imperial diploma and two other important documents that precede them are copied in full.⁴⁴ Although both Folcuinus and the anonymous Gent monk clearly intended to create a usable past for their institutions, they were guided by more pressing practical needs as well. Composed in a period of monastic reform and restoration, the two cartularies undoubtedly also aim at remembering and thus recovering properties that were lost during the chaotic times following the Viking invasions and the disintegration of the Carolingian empire. This material concern accounts not only for the inclusion of a Carolingian polyptych (or fragments of it) in both cartularies, but also for several interpolations in the Gent *Liber Traditionum Antiquus* and for the presence of some falsifications or forgeries in the *gesta abbatum* of St. Bertin.⁴⁵

There are no further western examples from the tenth century, and it is apparently only in the eleventh century that the cartulary really broke through in western Francia. No less than 31 examples, most of which dating from the second half of the century and concerning monastic institutions, are known. Several of these, for instance the cartulary of St. Père de Chartres compiled around 1087 by the monk Paul,⁴⁶ continue the tradition of the commemorative cartularies, in which the charters that are arranged more or less chronologically by abbot are either prefaced by or interwoven with historical parts about the

⁴⁴ GYSSELING and KOCH, *Diplomata Belgica*, 1, pp. 123-138. On this text, see G. DECLERCQ, *Traditievorming en tekstmanipulatie in Vlaanderen in de tiende eeuw: Het "Liber Traditionum Antiquus" van de Gentse Sint-Pietersabdij* (Brussels, 1998), with a French summary on pp. 261-269. For the passages borrowed from the *gesta abbatum* of Fontenelle, a manuscript of which must have arrived in the Gent abbey with the relics of Wandregisilus and Ansbertus in 944, see also J. LAPORTE, "Gérard de Brogne à Saint-Wandrille et à Saint-Riquier", *Revue Bénédictine* 70 (1960), pp. 159-160. UGÉ, "Creating a usable past", pp. 899-900, supposes that Folcuinus of St. Bertin also knew the *gesta* of Fontenelle. On the *Gesta abbatum Fontanellensium*, which contain short references to 51 charters and diplomas, see I. WOOD, "Saint-Wandrille and its hagiography", in: *Church and Chronicle in the Middle Ages: Essays Presented to John Taylor*, ed. I. WOOD and G.A. LOUD (London, 1991), pp. 1-14.

⁴⁵ On the interpolations in the *Liber Traditionum Antiquus* of St. Peter's, see DECLERCQ, *Traditievorming en tekstmanipulatie*, esp. pp. 96-129. For the forgeries in the "chronicle cartulary" of St. Bertin, see, apart from UGÉ, "Creating a usable past", pp. 894-896, also N. HUYGHEBAERT, "Le comte Baudouin II de Flandre et le 'custos' de Steneland: A propos d'un faux précepte de Charles le Chauve pour Saint-Bertin (866)", *Revue Bénédictine* 69 (1959), pp. 49-67 and KÖLZER, *Merowingerstudien* 1, pp. 111-135.

⁴⁶ B. GUÉRARD, *Cartulaire de l'abbaye de Saint-Père de Chartres* (Paris, 1840). Cf. GEARY, *Phantoms of Remembrance*, p. 103.

origins of the monastery or the deeds of the abbots. Hybrid forms were also possible. In St. Chaffre du Monastier (*ca.* 1087) the organization of the cartulary itself, called the *Liber de reparatione cartarum*, is topographical, but the monks provided the charters with running commentary, which nevertheless makes the collection look rather like a “chronicle cartulary”.⁴⁷ As Patrick Geary has stressed, even cartularies that seem more simple collections of charters, such as the cartulary of Flavigny (*ca.* 1020), attest to a chronological vision of their institution by arranging the documents by periods in the house’s history.⁴⁸ The most important of these commemorative collections is undoubtedly the cartulary of Cluny, begun around 1030, but essentially dating from the second half of the eleventh century. Here the traditional distinction between royal diplomas and private charters is combined with the chronological arrangement of the commemorative cartulary. In fact, the Cluny cartulary consists of two books, which—according to the preface to the *gesta* of Berno, the first abbot—belong to one and the same project: the first volume, now the Cartulary C, contains the royal diplomas and the papal privileges, the other volume (at present the so-called Cartularies A and B) gathers together some 3000 private charters. These are arranged in roughly chronological order by abbot, and the book is conceived of as the history or *gesta* of the abbots.⁴⁹ The commemorative and historical concerns that guided the compilers are underlined not only by the insertion of introductions to the charters of the first abbots, but also by the fact that Cartulary A opens with a series of annalistic notices from 910 up to 1088, known as the *Venerabilium abbatum Cluniacensium chronologia*.⁵⁰ Because charters and diplomas were in general only dated by the regnal years of the king until the eleventh century these annals offer a chronological framework for the whole undertaking in accordance with the relatively new practice of dating by the Christian era. This is apparently also the reason why the com-

⁴⁷ U. CHEVALIER, *Cartulaire de l’abbaye de Saint-Chaffre du Monastier et Chronique de Saint-Pierre du Puy* (Montbéliard and Paris, 1891), pp. 1-150.

⁴⁸ GEARY, *Phantoms of Remembrance*, p. 103, citing Constance Bouchard.

⁴⁹ D. IOGNA-PRAT, “La confection des cartulaires et l’historiographie à Cluny (XI^e-XII^e siècles)”, in: *Les cartulaires*, pp. 27-44; see also D. IOGNA-PRAT, “La geste des origines dans l’historiographie clunisienne des XI^e-XII^e siècles”, *Revue Bénédictine* 102 (1992), pp. 153-170; M. HILLEBRANDT, “Les cartulaires de l’abbaye de Cluny: Aspects d’une conception monastique”, *Mémoires de la Société pour l’Histoire du Droit et des Institutions bourguignons, comtois et romands* 50 (1993), pp. 7-18; GEARY, *Phantoms of Remembrance*, pp. 103-107. Both the cartularies A and C begin with the preface to the *gesta* of Berno, in which there is a reference to the “first book” with the royal diplomas and the papal privileges: “*queque eius tempore precepta regum vel privilegia pontificum acte sunt series primi libri dilucide approbabit*”; *Chartes Cluny* 5, pp. 843-844.

⁵⁰ See IOGNA-PRAT, “La geste des origines”, pp. 154-157.

piler of the second *Liber Traditionum* of St. Peter's abbey at Gent, who worked around 1042, opened his work likewise with a set of monastic annals, the *Annales Blandinienses*. These are followed by a series of papal privileges, an incomplete copy of the tenth-century *Liber Traditionum Antiquus*, a narrative about the reform of the monastery in 941 in the form of a fictitious charter, the full text of some diplomas, and finally summaries of the private charters arranged chronologically by abbot, each change of abbot being explicitly marked by a short historical notice.⁵¹ Elsewhere, a cartulary might be introduced by a hagiographic dossier concerning the abbey's founder as well as a list of abbots (Landedévenec, 1047-1055).⁵² These examples show that for many monastic communities in the West a cartulary formed an integral part of a historical narrative and was therefore intimately connected with creating and maintaining their institutional identity. In the second half of the eleventh century, however, some other cartularies in the West were organized in a more systematic manner. Around 1075-1080, the monks of Marmoutier assembled their charters and notices in a series of regional cartularies, while a separate book, the *Liber de servis*, was reserved for the donations of serfs.⁵³ Towards the end of the century, a few cartularies, including, for example, the "grand cartulaire" of St. Victor in Marseille (ca. 1080-1090) and the cartulary of St. Aubin d'Angers (ca. 1087-1095), already present the typical composition of later copybooks: they open with a few sections containing documents issued by important authors (papal privileges, royal diplomas, charters of counts and bishops) and all other charters are then arranged geographically.⁵⁴

In conclusion, it is clear that the origins and the early development of cartularies were fundamentally different in the eastern and western regions of Francia. The question, of course, is how to explain this difference, for as Patrick Geary has emphasized, "any comprehensive explanation for the appearance of cartularies must explain not only their appearance in the eastern regions of Francia in the 820s, but also their total absence in the West before the tenth

⁵¹ A. FAYEN, *Liber Traditionum Sancti Petri Blandiniensis* (Gent, 1906). The papal privileges and the annals were omitted in this edition. We prepare a new edition for the *Monumenta Paleographica Medii Aevi*.

⁵² H. GUILLOT, "Cartulaires bretons médiévaux", in: *Les cartulaires*, pp. 333 and 336; cf. J.M.H. SMITH, "Oral and written: Saints, miracles and relics in Brittany, c. 850-1250", *Speculum* 65 (1990), pp. 317-322.

⁵³ BARTHÉLEMY, "Note sur les cartulaires de Marmoutier", pp. 247-259.

⁵⁴ M. ZERNER, "L'élaboration du grand cartulaire de Saint-Victor de Marseille", in: *Les cartulaires*, pp. 217-246; O. GUILLOT, *Le comte d'Anjou et son entourage au XI^e siècle*, 2 vols. (Paris, 1972), 1, pp. 435-455 ("Appendice 1: Les parties les plus anciennes du cartulaire de Saint-Aubin").

century".⁵⁵ Geary thinks that the appearance of cartularies in the East was primarily a consequence of the problems with which institutions were faced when the Carolingians took control over regions such as Bavaria and Alsace. In order to defend earlier property transactions, abbeys and churches were forced to prepare dossiers of original charters or to elaborate summaries of them, which were ultimately copied into cartularies. In the West, where the Carolingian rise to power had taken a different course, there was no need for such dossiers or summaries, and here cartularies did not appear until the tenth and eleventh centuries "as part of the concern for reforming the past in the light of present needs".⁵⁶ Another recent explanation is that suggested by Michel Parisse, who links the appearance of cartularies to the different structures of the landed property in East and West during the Carolingian period. In eastern Francia, churchmen were faced with hundreds, if not thousands of private charters, often recording very small property transactions. To protect these possessions, it was necessary to gather all these scraps of parchment into cartularies. In the West, where the property structures were characterized by great estates, the main concern was not recording titles to property, but the income of these estates (hence the elaboration of polyptychs). The need to gather charters in copybooks only arose when the manorial system disintegrated in the eleventh century and, as a consequence, the number of small donations increased considerably.⁵⁷

Both of these explanations are, in my opinion, not entirely satisfactory, for they fail to take into account the nature and the use of the documents included in those cartularies. The early medieval charter evidence is still largely dominated by the late Roman *carta*. This private charter, usually written in the first person in the form of a statement issued by the author of the legal transaction and drawn up according to more or less standardized legal formulae, originally had two marks of authentication which were essential in view of its probative value: the autograph subscriptions of the author of the charter and the witnesses on the one hand, and the drafting of the charter by a public scribe or notary, often qualified as *cancellarius*, who acted at the request of the author of the charter ("*rogatus*") and subscribed the document with his sign, on the other.⁵⁸ In the East, the autograph subscriptions of author and witnesses had already disappeared by the eighth century, to be replaced by a simple mention of their *signum*, sometimes accompanied by a mark, both in the hand of the scribe.

⁵⁵ GEARY, *Phantoms of Remembrance*, p. 84.

⁵⁶ GEARY, *Phantoms of Remembrance*, pp. 81-107, esp. pp. 86-87.

⁵⁷ PARISSÉ, "Écriture et réécriture des chartes", pp. 258-259.

⁵⁸ See P. CLASSEN, "Fortleben und Wandel des spätrömischen Urkundenwesens im frühen Mittelalter", in: *Recht und Schrift im Mittelalter*, pp. 13-54.

These non-autograph *signa* and marks refer to a practice known as the *firmitio*, by which the author of the charter and the witnesses placed their hands on the sheet of parchment, so as to corroborate the document and its content.⁵⁹ However, in some regions, particularly in Bavaria, this practice that had replaced the autograph subscription in turn fell into disuse from the late eighth or early ninth century onwards, as can be inferred from the witness lists that are increasingly reduced to a simple enumeration of names (“*haec sunt testes*”).⁶⁰ As for the scribes themselves, members of the recipient institution, acting by order of their abbot or bishop (“*iussus*”), began from the last quarter of the eighth century onwards increasingly to take the place of the public, or rather the local scribes, who in these regions were generally village priests or clerics. In the course of the ninth century, monastic and episcopal scribes rapidly became predominant and local scribes had disappeared completely by the end of the century.⁶¹ This double development seems not only to have undermined the possible use of the *carta* in court proceedings,⁶² but probably also had as a result that, in the absence of authenticating features, the notion of the “original” character of the sheet of parchment on which the charter was written, began to fade away. Moreover, the initiative for drafting a written record about a property transaction evidently shifted from the author of the legal transaction to the ecclesiastical recipient. Henceforward, it was up to this beneficiary, usually represented by a monk or a cleric, to decide whether the written record should take the form of a formal charter or of an informal notice, and whether the record should be written on a single sheet of parchment, or directly into a book.⁶³ What counted

⁵⁹ On this practice, see FICHTENAU, *Das Urkundenwesen in Österreich*, pp. 60-71.

⁶⁰ See, e.g. *Tr Freising* 1.

⁶¹ In Freising the episcopal scribes are predominant from the middle of the eighth century onwards (*Tr Freising* 1, pp. XXXVIII-XXXX). In the abbeys of Lorsch and Fulda monastic scribes became preponderant in the last quarter of the eighth century; see F. STAAB, *Untersuchungen zur Gesellschaft am Mittelrhein in der Karolingerzeit* (Wiesbaden, 1975), pp. 137-153 and STENGEL, *Urkundenbuch des Klosters Fulda* 1, pp. LIII-LXIX. In Werden this is the case from the foundation of the abbey in 793 onwards (BLOK, *Een diplomatisch onderzoek*). According to MCKITTERICK, *The Carolingians and the Written Word*, pp. 115-126, increasing scribal activity is seen on the part of St. Gall in the first half of the ninth century, and its monastic scribes become predominant in the third quarter of the ninth century. Earlier, BRUCKNER, “The diplomatic of early Alemannian charters”, p. XI, took the view that the majority of the St. Gall charters were already written by monastic scribes in the last quarter of the eighth century. For R. SPRANDEL, *Das Kloster St. Gallen in der Verfassung des Karolingischen Reiches* (Freiburg im Breisgau, 1958), pp. 82-97, the decisive moment came with the abbacy of Gozbert (816-837).

⁶² In Freising, charters generally played no role in case of disputes, but there are three exceptions, dating from 806, 829 and 849 respectively, when “*cartae*” or “*scripta*” were used as evidence together with witnesses; see FICHTENAU, *Das Urkundenwesen in Österreich*, pp. 58-59.

⁶³ Cf. JOHANEK, “Zur rechtlichen Funktion”, pp. 142-143 and FICHTENAU, *Das Urkundenwe-*

for the beneficiary, in the end, was the content of the document and, above all, the names of the witnesses, who could be called upon to testify in case of dispute.⁶⁴ Summary *notitiae* rather than formal *cartae* thus became the preferred framework for property records in eastern Francia.

This transition from formal charters to notices with little or no set form, let alone that from single records to entries in copybooks, did not happen overnight. Episcopal and certainly monastic scribes abandoned the traditional form of the subjective and more formulaic *carta* only gradually for the shorter and less formal framework of the objective *notitia*. In the great Bavarian bishoprics this transition was already well on its way by the first half of the ninth century. For the episcopate of Arbeo (764-783), the Freising cartulary contains only 17 notices out of a total of 89 documents, but under his successor Atto (783-811) their number rises to more than half of the 191 acts recorded, and in the days of bishop Hitto (811-835) no less than two thirds of the 309 documents belong to this category of property records.⁶⁵ The Bavarian and the eastern Frankish abbeys in general, were somewhat more “conservative” in this respect, for they continued to favour the *carta* at least until the middle of the ninth century.⁶⁶ Ultimately, however, throughout the East the charter gave way to summary notices, which became the normal records for property transactions by the early tenth century.⁶⁷ This shift from *carta* to *notitia* was more than just a stylistic change in the wording of written records. It also reflected a different attitude towards the nature of the document itself. Drawn up in the first person, a *carta* was first and foremost a personal statement recorded in writing, by which the author of a transaction committed himself and his heirs to fulfilment of a prop-

sen in Österreich, p. 81.

⁶⁴ These names were, however, only useful in the short run. After the death of the witnesses we must assume that uncontested durable possession of land was probably considered proof of ownership. This may explain why in some cartularies and *Traditionsbücher* the names of the witnesses were omitted. In the ninth-century cartulary of Mondsee, e.g. the names of witnesses, apart from a few exceptions, were systematically replaced by the mention “*sunt testes multi*”; see RATH and REITER, *Das älteste Traditionsbuch*. For examples of a later date: H. WANDERWITZ, “Traditionsbücher bayerischer Klöster und Stifte”, *AfD* 24 (1978), p. 375.

⁶⁵ See *Tr Freising* 1, p. XXXXI.

⁶⁶ See H. FICHTEAU, “‘Carta’ et ‘Notitia’ en Bavière du VIII^e au X^e siècle”, *Le Moyen Age* 69 (1963), pp. 116-120, who also remarks that, at first, the notice was used mainly for transactions by clerics or concerning the foundation of churches, while for a certain time the charter remained the preferred framework for legal transactions by lay donors.

⁶⁷ In the abbey of Werden, the transition took place in the second half of the ninth century; cf. BLOK, *Een diplomatisch onderzoek*, pp. 84-86. In the abbey of Corvey in Saxony, where the tradition of charter drafting scarcely penetrated, this was apparently already the case in the second quarter of the century; see K. HONSELMANN, *Die alten Mönchslisten und die Traditionen von Corvey* (Paderborn, 1982), pp. 83-131.

erty transfer. A *notitia*, on the other hand, lacks any personal involvement by the author of the legal transaction, who is only mentioned in the third person. The notice's function was therefore not to bind the donors, but rather, as Peter Johanek has argued, "to provide them with a reinforcement of the obligation of the ecclesiastical community to preserve their donation to the saint and protect it against an alienation which would have endangered the purpose of their gift and hence the value of the preservation of their 'memoria'".⁶⁸ Whether such a record took the form of a small scrap of parchment or that of an entry in a copy-book was in fact of minor importance, for as Heinrich Fichtenau has stressed, this meant only a different arrangement in practical matters, not in the way of thinking about written records.⁶⁹

This, in my opinion, is the background against which the appearance of the East Frankish cartularies in the ninth century should be placed. The profound transformation brought about by the increasing involvement of monastic and episcopal scribes in the process of recording property transfers had the result that henceforward both the making and the keeping of such records—*cartae* and *notitiae* alike—formed an integral part of organizing a church's internal institutional memory. In other words, monks and clerics could now decide to their best advantage how transactions were set down and in what form they should be preserved. Faced with the presence in their archives of numerous sheets of parchment, which were no longer of great use in legal disputes but which could easily be lost through neglect or theft, many abbots and bishops may therefore have decided that it was better to gather them into books in order to preserve the *memoria*, not only of the benefactors, but also of the property transactions themselves.⁷⁰ Once this was done, it was no longer necessary to preserve the originals of these private charters, let alone those of notices, with the same care as before. They could be neglected or might, after a certain time, possibly even be destroyed. Indeed, the changing attitude towards written records reflected in the increasing preponderance of objective *notitiae* must also have affected the subjective *cartae* still kept in the archives, which, as a consequence, were prob-

⁶⁸ JOHANEK, "Zur rechtlichen Funktion", p. 145; the English translation is that of T. REUTER, "Property transactions and social relations between rulers, bishops and nobles in early eleventh-century Saxony: the evidence of the 'Vita Meinwerici'", in: *Property and Power in the Early Middle Ages*, ed. W. DAVIES and P. FOURACRE (Cambridge, 1995), p. 168.

⁶⁹ FICHTEAU, *Das Urkundenwesen in Österreich*, p. 102. Direct entries in *Traditionsbücher*, however, were less common than is often thought; see, apart from Fichtenau, who discusses the case of Salzburg in the second half of the tenth century, also MOLITOR, "Das Traditionsbuch", pp. 69-70 and P. ACHT, *Die Traditionen des Klosters Tegernsee 1003-1242* (Munich, 1952), pp. 40*-45*.

⁷⁰ See in this respect the preface of the Freising cartulary by Cozroh: *Tr Freising* 1, pp. 1-2; cf. *supra*, note 37.

ably no longer appreciated as such, but rather seen as a rhetorical form with the same value (and function) as the summary notice. The royal diplomas, however, retained their full probative value only as originals. They were therefore not copied in these East Frankish cartularies, but preserved with great care in the "charter treasury".

In western Francia, the development of charter drafting was completely different. Here, the *carta* drawn up along the lines of the late Roman framework for legal documents subsisted for much longer. Village priests, other clerics and, in some regions, even *cancellarii* still acted as public or local scribes as late as the tenth century,⁷¹ whereas the autograph subscriptions, particularly in the south, only progressively made way for objective *signa* written by the scribe.⁷² In the ninth century, the *carta* regularly continued to be used in court proceedings, and there was even a procedure for destroying invalid charters in court.⁷³ For West Frankish abbeys and churches, it therefore remained necessary to preserve the originals of private charters, which were still valued as such. All this changed, however, in the tenth and eleventh centuries, mainly as a consequence of the monastic reform movement. During this period, the drafting of charters, just as had happened earlier in the East, became almost the exclusive domain of ecclesiastical beneficiaries. In the words of Olivier Guyotjeannin, this "monastic bid for power" ("*une prise de pouvoir monastique*") turned the written record into a product of schools and scriptoria.⁷⁴ This in turn ultimately led to the disappearance of the traditional *carta* of late Roman origin and its replacement with a whole variety of new documents: subjective and sometimes quite solemn formal charters, as well as objective and often long narrative notices (or *chartes-notices* in the terminology of French diplomatists), both of which could record a heterogeneous range of legal actions (donations, precarial grants, internal administrative arrangements, records of legal proceedings, agreements concerning the rights of advocates and so on).⁷⁵ By shaking off the rigid and formulaic framework of the old *carta*, the monastic scribes now had the opportunity (and the power) to bend the norms of drafting records

⁷¹ Cf. R.-H. BAUTIER, *Chartes, sceaux et chancelleries: Études de diplomatique et de sigillographie médiévales*, 2 vols. (Paris, 1990), 1, pp. 276-277.

⁷² For two examples of autograph subscriptions in charters from the late ninth century, see AT SMA and VEZIN, *Les plus anciens documents de l'abbaye de Cluny* 1, Nos. 1-2.

⁷³ J.L. NELSON, "Dispute settlement in Carolingian West Francia", in: *The Settlement of Disputes in Early Medieval Europe*, ed. W. DAVIES and P. FOURACRE (Cambridge, 1986), pp. 45-64.

⁷⁴ O. GUYOTJEANNIN, "'*Penuria scriptorum*'. Le mythe de l'anarchie documentaire dans la France du Nord (X^e-première moitié du XI^e siècle)", *BEC* 155 (1997), pp. 32-33.

⁷⁵ See GUYOTJEANNIN, "'*Penuria scriptorum*'", pp. 11-44. For a regional study of this transformation, cf. BARTHÉLEMY, *La société dans le comté de Vendôme*, pp. 19-116.

to better suit their own aims and needs. This therefore gave them far greater freedom, or rather flexibility in the way transactions and other arrangements were written down. Notices and charters in this period often include informative details about the circumstances and the motives of a transaction, thus tending to become narratives that were, if necessary, extended and updated when a new development occurred in the same case. They aimed in the first place, as explicitly indicated by the eleventh-century notices of Marmoutier,⁷⁶ to inform the future members of the own community, not only in order to preserve the memory, but also to help them to prepare their defence in case the rights or properties of the abbey were challenged. This “*mutation documentaire*”, as the renewal and differentiation of the charter evidence has been labelled by Dominique Barthélemy,⁷⁷ coincided with another documentary evolution, brought about by the shifts in political power. Public authority in eleventh-century France was no longer the exclusive competence of the king, but also of counts, dukes, castellans and even local lords, all of whom issued charters in their name. As a result, the traditional distinction between royal diplomas and private charters became more and more irrelevant.⁷⁸ From the middle of the eleventh century onwards, the emergence of the seal created a new fundamental distinction between the sealed charter on the one hand and the unsealed sheet of parchment on the other⁷⁹.

Faced with these innovations in diplomatic as well as with a spectacular increase in the number of written records, the eleventh-century archivists developed new types of documents. Among these were what is known as the *pancarte*, in which many, often very small, property transactions were regrouped,⁸⁰ and also the cartulary that assembled royal, papal, episcopal and other charters

⁷⁶ In the eleventh century, the notices of Marmoutier were often introduced by the formula “*nosse debetis, si qui eritis posteri nostri, Maioris scilicet huius habitatores monasterii sancti Martini*” (BARTHÉLEMY, *La société dans le comté de Vendôme*, p. 96). For similar *formulae* elsewhere, see GUYOTJEANNIN, “*Penuria scriptorum*”, p. 38 note 77.

⁷⁷ BARTHÉLEMY, *La société dans le comté de Vendôme*, pp. 19-116. However, this author has since apparently changed his opinion somewhat; see D. BARTHÉLEMY, “Une crise de l’écrit? Observations sur des actes de Saint-Aubin d’Angers (XI^e siècle)”, *BEC* 155 (1997), p. 99 note 24: “*On pourrait ajouter que la ‘mutation documentaire’ est un concept assez imprécis: est-ce la fonction des écrits, la gamme de leurs genres, ou seulement quelques aspects de leur style qui changent? J’aurais peut-être mieux fait de renoncer à ce concept*”.

⁷⁸ Cf. GUYOTJEANNIN, PYCKE and TOCK, *Diplomatique médiévale*, pp. 103-104 and 111-112.

⁷⁹ On the emergence of the seal in the eleventh century, see BAUTIER, *Chartes, sceaux et chancelleries*, 1, pp. 140-152.

⁸⁰ See M. PARISSÉ, “Les pancartes: Étude d’un type d’acte diplomatique”, in: *Pancartes monastiques des XI^e et XII^e siècles*, ed. M. PARISSÉ, P. PÉGEOT and B.-M. TOCK (Turnhout, 1998), pp. 11-62; PARISSÉ, “Écriture et réécriture des chartes”, pp. 247-265.

(and notices). The strong historical and commemorative overtones of several western cartularies, together with the presence in these copybooks of many reworked, interpolated and forged charters and diplomas, show that they were not solely aimed at the protection and administration of rights and properties, but were also an essential part of the assertive effort of the reformed monks to construct a usable past that suited new needs and pretensions. Reforming a monastery was indeed more than imposing the rule of Benedict or reestablishing internal discipline. It also implied recovering, or at least claiming, lost property and reaffirming institutional identity. The archives played a pivotal role in these efforts, for, as Patrick Geary rightly pointed out, “for each institution the memory of its past was a key to its ability to meet the challenges of the present”.⁸¹ The archival collections were therefore searched, (re)organized, copied and where necessary reconstructed or even forged. The monastic reform movement of the tenth and eleventh centuries therefore led to a “resurrection of the past and its adaptation to the present”.⁸² Commenting charters and diplomas in the historical sections of a cartulary gave monks the opportunity to justify contemporary decisions by tradition and to use periods of past glory and prosperity as a source of inspiration for an often uncertain present. Gathering diplomas and privileges, as well as charters and notices, into one volume provided at the same time greater security against the possible loss of documents,⁸³ and it also informed the monks in a convenient way about the arguments available to counter possible challenges. In the face of powerful opponents, or “*calumniatores*” as the opening word of the cartulary of Marcigny (ca. 1095) calls them,⁸⁴ a cartulary could thus become an instrument to prepare a successful defence. Contrary to what had happened in the ninth century in eastern Francia, however, the unsealed charters and notices in the eleventh-century West retained a certain value as such, even after they had been copied into a copybook. Although rarely invoked directly when rights or properties were challenged, let

⁸¹ GEARY, *Phantoms of Remembrance*, p. 117.

⁸² J. DUBOIS, “Les moines dans la société du moyen âge (950-1350)”, *Revue d'histoire de l'Église de France* 60 (1974), p. 19, quoted by G. CONSTABLE, “Forgery and plagiarism in the Middle Ages”, *AfD* 29 (1983), p. 12.

⁸³ See, e.g. the motivation for the cartulary of Cluny given in the preface to the *gesta* of Berno, the first abbot: “*maxime quarundam ipsarum cartularum perditio que nostrorum tempore venerat; nam plurime earum varia per loca deportate, aut portitorum negligentia deperisse, aut vetustate sui et diminutione dinoscuntur esse consumpte*” (ed. *Chartes Cluny*, 5, p. 844).

⁸⁴ J. RICHARD, *Le cartulaire de Marcigny-sur-Loire (1015-1144): Essai de reconstitution d'un manuscrit perdu* (Dijon, 1957), p. 6: “*Calumniatorum frontem sagace industria conterimus, si ea quae in praesenti gerimus litteris mandamus, quatenus indisciplina posteritas priorum suorum facta minime violare audeat, cum ea sub testibus cartis confirmata cognoverit*” (opening phrase of the preface to the first book of the cartulary).

alone presented as proof in courts of justice, the original documents, as some examples show, were nevertheless weapons that could support the oral discourse during legal proceedings. For, as Laurent Morelle has emphasized, they were objects that could be shown, seen and touched and, above all, when read aloud, they could reanimate the words spoken at the time of the original transaction, in particular the formidable excommunication and malediction formulae often pronounced against those who would dare to infringe the transaction.⁸⁵ This may account for the solemn and verbose wording of many charters and notices in the West, and especially for the elaborate penal clauses which were intended to impress those who heard them. The fact that originals therefore remained useful probably explains why at least a small part of the originals of private charters written in early western cartularies have survived, while in the East they seem to have disappeared entirely at an early stage.⁸⁶ Instead, in the West the gradual neglect of these unsealed sheets of parchment is in all probability rather a consequence of the increasing preponderance of the sealed charter in the course of the twelfth and the first half of the thirteenth century.

The link that appears to exist in both East and West between the nature and the use of charters on the one hand and the appearance of cartularies and *Traditionsbücher* on the other is confirmed by the situation in Italy. Here, private *cartae*, written by professional and largely lay notaries, maintained and even increased their role as legal instruments from the ninth through eleventh centuries. Authenticated by a notarial signature and comprising the subscriptions or marks of the author and the witnesses, these charters, which continued to be drafted according to a tradition reaching back to late Antiquity, were of supreme importance in court proceedings. In the tenth and eleventh centuries, written evidence in the form of originals or even of authenticated copies constituted, in the words of Chris Wickham, “the overwhelmingly dominant mode of proof”, so much so that the demonstration of a charter in public in the court (*ostensio cartae*) generally ended a case without contest.⁸⁷ It is therefore hardly surprising, in my opinion, that the first cartularies in the proper sense of the word did not appear in Italy until the last quarter of the eleventh century, namely at the abbeys of Subiaco (1069-1085) and Farfa (shortly before 1100).⁸⁸ The

⁸⁵ L. MORELLE, “Les chartes dans la gestion des conflits”, pp. 286-297. Cf. also BARTHÉLEMY, “Une crise de l’écrit?”, pp. 107-111.

⁸⁶ See *supra*, p. 150.

⁸⁷ See C.J. WICKHAM, “Land disputes and their social context in Lombard-Carolingian Italy”, in: *The Settlement of Disputes*, pp. 105-124, esp. pp. 114-118. Cf. also F. BOUGARD, “‘Falsum falsorum iudicium consilium’. L’écrit et la justice en Italie centro-septentrionale au XI^e siècle”, *BEC* 155 (1997), pp. 299-314.

⁸⁸ On the earliest cartularies in Italy, see KÖLZER, “Codex Libertatis”, pp. 611-633.

monumental *Liber gemniagraphus sive cleronomialis ecclesie Pharfensis* presents several affinities with the historical or commemorative cartularies of western Francia. Compiled by the monk Gregory of Catino in the years 1092-1099, it contains nearly 1500 charters and diplomas which are ordered chronologically by abbot. The author's commemorative concerns are highlighted by the insertion of short historical parts at the occasion of each change of abbot, as well as by the inclusion of a catalogue of abbots and a set of monastic annals covering the period 661-1099.⁸⁹ Because both Farfa and Subiaco were influenced by the Cluny reform, it may be assumed that in Italy the cartulary was probably a product imported from France. In any case, in the first half of the twelfth century Petrus Diaconus, the author of the Montecassino cartulary (ca. 1130), still describes the making of such a collection as "*inusitatum*".⁹⁰ Theo Kölzer was therefore probably right when he supposed a connection between the late appearance of cartularies in Italy and the continuing value attached to the original charters.⁹¹

Whatever the case may be, north of the Alps the emergence of the cartulary clearly coincided with the growing involvement of ecclesiastical beneficiaries in the production of charters, a development which led both in the East and in the West to a greater flexibility in the way records were drafted, and hence ultimately to the disappearance of the late Roman *carta*. In eastern Francia the formal charter issued by the author of a transaction gave progressively way in the eighth and ninth centuries to notices with little or no set form, produced and kept by the episcopal or monastic recipient. Because this transition went together with a changing attitude toward the written record, whereby the obligation to preserve a transaction shifted in fact from its author to the beneficiary, the external form of these documents became less important than their content. From the 820s onwards charters and notices alike were therefore often collected in systematically organized copybooks, primarily for reasons of security and administrative convenience. In the West, reformed monks in turn abandoned the old framework for legal actions, reaching back to the late Roman empire, in the tenth and eleventh centuries, replacing it with new and more diverse types of records that were better adapted to the social and political realities of the

⁸⁹ See H. ZIELINSKI, *Studien zu den Spoletinischen "Privaturkunden" des 8. Jahrhunderts und ihrer Überlieferung im Regestum Farfense* (Giessen, 1970), p. 25-112 and KÖLZER, "Codex Libertatis", pp. 609-653.

⁹⁰ *Leonis Marsicani et Petri Diaconi Chronica Monasterii Casinensis*, ed. W. WATTENBACH (Hannover, 1846: MGH SS 7), p. 567. On this cartulary, see A. MANCONE, "Il 'Registrum Petri Diaconi'", *Bollettino dell'Archivio Paleografico Italiano*, nuova serie 2-3 (1956-1957), pp. 99-126.

⁹¹ KÖLZER, "Codex Libertatis", p. 633.

period. Here, the archival memory had hitherto essentially been organized in the form of collections of originals, but now the need of the monastic reform movement to create a useful past resulted in the composition of historical or commemorative cartularies in which charters and diplomas became part of a narrative aimed at interpreting the past in light of the concerns of the present.

The development in the nature and in the use of the documents preserved in cartularies and *Traditionsbücher* therefore forms the background against which, in both East and West, the appearance of these early copybooks should be placed. This general context, however, was not a compelling necessity. In eastern Francia, the abbey of St. Gall opted for an elaborate organization of its collection of originals in the ninth century rather than for the compilation of a copybook, just as important abbeys in the West, including St. Denis or Corbie, managed without a cartulary until the thirteenth century.⁹² Indeed, local circumstances and immediate needs determined to a large extent the form in which the archival memory of an institution was preserved. The general context merely established the parameters, thus confining the choices that were available. In most cases the compilation of a cartulary or a *Traditionsbuch* was therefore the result of individual decisions by abbots, bishops or archivists, who, faced with specific challenges or problems (an internal reform, a restoration, an administrative reorganization, a disaster, the political and ecclesiastical situation in a region ...), tried to serve the interests of their monastery or bishopric as best they could.

⁹² Cf. FICHTEAU, *Das Urkundenwesen in Österreich*, p. 84 and MORELLE, "Histoire et archives", p. 136.

The Metamorphosis of Three Monastic Charter Collections in the Eleventh Century (Saint-Amand, Saint-Riquier, Montier-en-Der)

LAURENT MORELLE

The place of charters in social practices cannot be fully appreciated without an adequate knowledge of their production, their range and their diversity. The documents that survive, together with those known through indirect references (in scattered copies or mentions of losses), are only a residual part of what was produced. Any given charter collection has been affected by accidents of conservation: by selection—whether deliberate or not—and by differing amounts of attention being devoted to different documents, while at the same time addition of new materials was taking place. To know to what extent the visible tip of the documentary iceberg reflects the part that is invisible is an old methodological preoccupation. This problem obtrudes itself more clearly now, when medievalists are interesting themselves in literacy in particular. The question is certainly a quantitative one, but it is even more a qualitative one. Does the view conveyed by the sources simply show a reduction of what was once there, or is it a distortion? Similarly, how should we interpret the ebb and flow in the numbers of documents? What part of this is due to fluctuations in the production of writings and what is due to the vicissitudes of conservation? It is evident that studies of the “growth of literacy” cannot function without research into medieval archives, which encompasses both the history of the conservation of documents and the life-cycles of the archives themselves. A few general remarks are probably in order before we plunge into the subject of this article, which is concerned with the charter production in the eleventh century.

1. Preliminary Remarks

The causes of archival losses are numerous, needless to say. The history of charter collections is filled with dramatic events which were both varied and calamitous: war, plunder, arson or accidental fires. In addition to the calamities that archivists had to deal with, there was also the deliberate alteration of documents in the archives, when the subject matter the documents were concerned with seemed more important than their physical form as “charters”.¹ Perhaps that in this way the deliberate destruction was accomplished of archives that were considered no longer useful. In some instances the archivists (when there were any!) were directly responsible for losses: through negligence and through bad conservation practices, which resulted in irreparable damage to documents prior to eliminating them altogether. Losses from archives are therefore not necessarily disconnected from the care accorded to them—far from it! Here, we reach the question of the “conservation” of documents in the strict sense of the word.

The term “conservation” may be understood in many ways. We must distinguish between *de facto* conservation, which is passive, and deliberate conservation, which is active. Deliberate conservation takes into consideration the materials and conceives of methods that are either more or less effective to protect them and to allow easy access to them.² In the first sense, “conservation” is the opposite of “destruction”, in the second it is the opposite of “neglect”. The distinction deserves being made because it is not necessarily the case that when documents were neglected that was done because there was a desire to destroy them. Neither “conservation” in the active sense of the term, nor destruction appear to have been common approaches.³ Rather, in the long run the normal attitude was probably simply a moderate concern for the archives.⁴ Care was devoted to them upon occasion, when necessity or a speci-

¹ It was quite common to use original charters as binding materials for manuscripts; see *infra*, pp. 183-184. We may compare this to the re-use of the famous Merovingian papyri at Saint-Denis, used in the years 1061-1065 for the fabrication of false originals (see H. ATSMAS and J. VEZIN, “Les faux sur papyrus de l’abbaye de Saint-Denis”, in: *Finances, pouvoirs et mémoire: Mélanges offerts à Jean FAVIER*, ed. J. KERHERVÉ and A. RIGAUDIÈRE (Paris, 1999), pp. 673-699).

² A recent survey was provided in two papers given at the XI^e Colloque du Comité international de paléographie latine (1995): E. POULLE, “Classement et cotation des chartiers au Moyen Age”, *Scriptorium* 50 (1996), pp. 345-355; G. DECLERCQ, “Le classement des chartiers ecclésiastiques en Flandre au Moyen Age”, *ibid.*, pp. 331-344.

³ POULLE, “Classement”, p. 355.

⁴ Cartulary prefaces lead easily to this type of complaint. See the well-known preface to the cartulary of the cathedral chapter of Laon, ed. A. BOUXIN, “Un cartulaire du chapitre de la cathé-

fic interest demanded it.⁵ This intermittent care, stemming from indifference and sometimes bordering on negligence, seems to me an almost inherent element in determining the destiny of archival materials, which the historian and diplomatist must take into consideration.⁶ Let us be very clear; if indifference does not mean “destruction”, it does nonetheless potentially prejudice a charter’s “chance of survival”. Thus, even if it is difficult to be convinced of the role of accidental misfortunes in the destiny of charter collections,⁷ it does not seem necessary to invoke a deliberate selection process to explain all archival losses.⁸

drale de Laon (XIII^e s.)”, *Revue des bibliothèques* 11 (1901), pp. 1-12, esp. pp. 3-5. Cf. B.-M. TOCK, “La diplomatie sans pancarte: L’exemple des diocèses de Thérouanne et Arras, 1000-1120”, in: *Pancartes monastiques des XI^e et XII^e siècles*, ed. M. PARISSE, P. PÉGEOT and B.-M. TOCK (Turnhout, 1998), pp. 131-157, esp. p. 157 note 85; POULLE, “Classement”, p. 349. On the themes of cartulary prefaces, see P. BOURGAIN and M.-C. HUBERT, “Latin et rhétorique dans les préfaces de cartulaire”, in: *Les cartulaires: Actes de la Table ronde organisée par l’École nationale des chartes et le G.D.R. 121 du C.N.R.S.*, ed. O. GUYOTJEANNIN, L. MORELLE and M. PARISSE (Paris, 1993: *Mémoires et documents de l’École des chartes* 39), pp. 115-136.

⁵ Due to a lack of good background material, there are few studies on the management of charter collections in the oldest periods. See E. STENGEL and O. SEMMELMANN, “Fuldensia IV: Untersuchungen zur Frühgeschichte des Fuldaer Klosterarchivs”, *AfD* 4 (1958), pp. 120-143 (an interesting treatment of dorsal notes); A. BRUCKNER, “Die Anfänge des St. Galler Stiftsarchivs”, in: *Festschrift Gustav Binz* (Basel, 1935), pp. 119-131.

⁶ The question is basic to the study of losses and the analysis of forged charters, in particular forged Merovingian charters. Many of them replaced charters that had disappeared. In relation to this, we have perhaps pointed the finger too often at the Vikings and not often enough at the negligence of archivists. See the meticulous remarks of C. BRÜHL, *Studien zu den merowingischen Königsurkunden*, ed. Th. KÖLZER, (Cologne, Weimar and Vienna, 1998), pp. 227 ff., esp. p. 249 (concerning the Merovingian precepts of Saint-Bertin). The notion of “*feststellende Fälschungen*”, developed by C. BRÜHL, “Der ehrbare Fälscher: Zu den Fälschungen des Klosters S. Pietro in Ciel d’Oro zu Pavia”, *DA* 35 (1979), pp. 209-218, is based on the idea that many forgeries do not really have a counterfeit character and were intended to replace lost charters.

⁷ For the ninth and tenth centuries, these accidents of history include the Viking invasions, the Hungarian incursions and other disturbances of the “century of iron”; see BRÜHL, *Studien zu den merowingischen Königsurkunden*, who is quite reserved about the influence of Viking raids; a more balanced consideration is found in H. PLATELLE, “Les archives ecclésiastiques d’après la leçon inaugurale du professeur C. Dekker”, *Mélanges de science religieuse* 43 (1986), pp. 21-31 (a comment on the lecture of C. DEKKER, “Kerkelijke archieven”, *Nederlands Archievenblad* 85 (1981), pp. 126-148; Karl Heidecker was kind enough to make it possible for me to consult this article; I would like to express my gratitude to him here for his generosity).

⁸ On this point P. GEARY, *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millennium* (Princeton, 1994; French tr. by J.-P. RICARD, *Mémoire et oubli à la fin du premier millénaire* (Paris, 1996)), is not strong enough; see my remarks on the chapter of the book concerning archives: L. MORELLE, “Histoire et archives vers l’an mil: Une nouvelle ‘mutation’?”, *Histoire et archives* 3 (1998), pp. 119-141.

Rudimentary and interrupted as it may have been, a conservation policy presupposes a more or less clear awareness of the value of archives. Certain traumatic events in the history of a community (exile, transfer, archival theft), moreover, may actually have contributed to the awareness of the value of the charter collection, as strengthening the identity of the establishment, in the same way as other elements of its treasury, although in its own specific way of course.⁹ In any case, we should restrain ourselves from thinking that the interest accorded to archives necessarily promoted the conservation of all documents. The concern for charters led to the distinguishing and hierarchical classification of types of documents, and thus to the preparation of conditions for a discriminating preservation of stored documents, or to put it differently, to opening the door for the elimination of items considered unnecessary or in exceedingly ill repair, or again to establishing meta-sources (*pancartae*) to make access easier.¹⁰ It is not necessary to construct an elaborate argument about archives to realize that certain charters are more valuable than others. And for those who preferred not to understand, events sometimes took over to teach them the art of making choices.

The knowledge we have of the stored charters depends to a great extent on indirect references: inventories, cartularies, chronicles filled with documents, *Gesta*. These “mediators” require a very critical examination: they filter the reality of the archive for the sake of the project at hand, which must be carefully identified to be able to ascertain what was discarded and what was deemed valuable. Here is another path by which we can approach the perception of the value of records and the conception that existed of an archival treasury.

These “mediators” have suffered a bad press upon occasion. M.T. Clanchy, for example, has argued that monks had a sort of teleology of the written record which made them redoubtable archival reducers.¹¹ Since authors exploited and reproduced archival documents and did so with a certain liberty, we tend to imagine that their liberties reflect that of archivists. But we must keep a level head: the intentions and practices of a historiographer are not those of an arch-

⁹ We shall return to this point later (*infra*, pp. 194-203).

¹⁰ See *infra*, pp. 176-186.

¹¹ M.T. CLANCHY, *From Memory to Written Record, England 1066-1307*, 2nd edn. (Oxford and Cambridge, Mass., 1993), p. 147: for the monks, “writings served as a memorial of their triumphs or as a warning of their difficulties”; also, “so far from advocating the mass-production of literates or documents, the monastic writer aimed to use records to convey to posterity a deliberately created and rigorously selected version of events”. These observations, which are correct in themselves, cannot be transferred automatically from the realm of historiography and personal behaviour to the realm of the “institutional” preservation of archives. Furthermore, do they take into account the motivations of all monastic historians?

ive keeper. Just because we see that the former selected their sources to mould the material to their intentions, it does not mean that we should attribute similar behaviour to the latter and decide that archives were subjected to the same arbitrary treatment. Moreover, without denying in any way the influence of our “mediators” on the conservation of primary sources, it seems risky to me to take as an underlying hypothesis the idea that the existence of a cartulary or a chronicle-cartulary *ipso facto* made the preservation of originals unnecessary. In my opinion, historians in the Middle Ages were able to see the difference between historiographical logic and archival logic.¹²

It is salutary to recognize the manipulation that occurs as a result of medieval historiographic work, yet that recognition should not lead to hypercriticism when it comes to evaluating the production of cartularies. After so many decades in which these collections were seen as simple reservoirs of documents, neutral, albeit partial and inadequate, a recent tendency has emphasized the ideological considerations behind the composition of the cartulary. It is entirely correct to underline the work and the presuppositions that led to its realization (for a cartulary is never the reproduction of a charter collection), but this vigilance should not lead the historian to underestimate the links between the cartulary and the arrangement of archives; in such a case he would deny himself a possible access to knowing the charter collection.¹³

Thus, if we wish to gain a better grasp of charter production, we shall have to start with these “mediators” and attempt to estimate the changes they inflicted on the primary sources. This approach, we realize, can only be applied to specific cases. I will restrict myself to three monasteries in the ecclesiastical province of Reims: Saint-Amand (Flanders, Tournai diocese), Saint-Riquier (Ponthieu, Amiens diocese) and Montier-en-Der (Southern Champagne, Châlons-sur-Marne diocese). They have several historical characteristics in common: they date from the Merovingian period and underwent reform during the tenth century. But even more, they offer our study a great advantage: the knowledge we have of their documentary material depends for all or most of their composite parts on an archival or historiographic compilation carried out at the end of the eleventh century or in the first decades of the twelfth century, close to the period that interests us in other words. We find archival compilations in the form of cartularies at Saint-Amand and Montier-en-Der and an inventory at Saint-Riquier, plus a historiographic compilation in the form of the

¹² I brought out this point in my review of P. Geary’s book (MORELLE, “Histoire et archives vers l’an mil”).

¹³ On the link between cartularies and archival organization, see POULLE, “Classement”, pp. 349-351.

chronicle of Hariulf at Saint-Riquier. To begin with, I will examine each collection, concentrating particularly on Saint-Amand, to elucidate the legacy of documentary records which has been left to us. I will focus on the logic they are based on with the hope of being able to pass “from observed charter collection to charters stored”. After which, I will propose a few reflections inspired by the evolution of charter production during the eleventh century, that our “mediators” allow us to perceive.

2. From Observed Charter Collection to Charters Stored: The Paths of Transmissions

2.1. Saint-Amand

The charter collection of Saint-Amand, which has been studied by Henri Platelle in two works published in 1962 and 1965¹⁴ is known to us essentially from two cartularies. All that is left of the originals is a few remnants.¹⁵ The larger of the cartularies dates from the years 1296-1301; we shall refer to it as the 1300 cartulary.¹⁶ This two-volume collection consisting of a total of 574 charters is a classic management cartulary which organizes its material in a methodical manner. Before it, an earlier cartulary was undertaken at the beginning of the twelfth century, in 1117 in all likelihood, by Gautier, a monk who was the archivist at the same time.¹⁷ The cartulary by Gautier disappeared during the French Revolution but Henri Platelle was able to reconstruct almost completely the composition of its 97 folios. The earliest part and its continuation to 1123 consisted of 46 numbered charters.¹⁸ In a prologue which is worthy of careful attention, Gautier explains his motives and states that he has

¹⁴ H. PLATELLE, *Le temporel de l'abbaye de Saint-Amand des origines à 1340* (Paris, 1962); ID., *La justice seigneuriale de l'abbaye de Saint Amand: Son organisation judiciaire, sa procédure et sa compétence du XI^e au XVI^e siècle* (Louvain and Paris, 1965).

¹⁵ For a general presentation of sources for the history of Saint-Amand, see PLATELLE, *Le temporel*, pp. 6-10.

¹⁶ Lille, Archives départementales du Nord, 12 H 1 and 2; on the cartulary, see PLATELLE, *Le temporel*, pp. 14-15.

¹⁷ H. PLATELLE, “Le premier cartulaire de l'abbaye de Saint-Amand”, *Le Moyen Age* 62 (1956), pp. 301-329. Henri Platelle demonstrated (*ibid.*, p. 312) that the cartularist Gautier and the abbot of the same name (1121-1124) were probably one and the same person.

¹⁸ On the inventory of the cartulary, see PLATELLE, “Le premier cartulaire”, Appendix II, pp. 319-329; the documents of the cartulary shall be referred to hereafter as: Gautier (followed by their number).

organised the charters chronologically.¹⁹ But these cartularies are not all we have at hand; many documents are known by very diverse paths, primarily as a result of isolated copies that complete the contents of the two large collections cited above.

For the period from the seventh century up to 1121 (death of Abbot Bovo II, 1107-1121), there are 61 charters which we can classify as follows:

- 22 charters for the seventh through tenth centuries (5 for the seventh century, none for the eighth century, 9 for the ninth century and 8 for the tenth century);
- 24 for a long eleventh century (996-1107);
- 15 for the abbacy of Bovo II (1107-1121) alone.²⁰

All the charters dating from before the eleventh century, with the exception of one, are mentioned both in Gautier's cartulary and in the 1300 cartulary. Only one private deed from the tenth century was forgotten in 1117, but fortunately transcribed in 1300.²¹ The situation for later charters is quite different: Gautier's cartulary has given us only 22 of the 39 charters, or 56% of the charter material of the eleventh century and the beginning of the twelfth; all of the charters copied by Gautier, with the exception of 5, are found in the 1300 cartulary.²² As concerns the charters omitted by Gautier, the textual tradition may be presented as follows:²³ the 1300 cartulary provides 10 documents abandoned by

¹⁹ Prologue published by PLATELLE, "Le premier cartulaire", Appendix I, pp. 318-319. On the chronological order: "*Ipsas namque cartas, sive privilegia, ordine quo per succedentia tempora ecclesie nostrae in munimentum cesserunt, transcribere curavimus*".

²⁰ See figure 1 at pp. 178-179. These figures are drawn from the data found in the works of PLATELLE.

²¹ Gift of Froidmont by Lietardis, "*relicta nobilis viri Odonis*" (before 952); ed. Ch. DUVIVIER, *Actes et documents anciens concernant la Belgique*, 1 (Brussels, 1898), pp. 23-24. Lietardis was the mother of Leudric, appointed abbot in 952 with the support of Count Arnulf of Flanders. This appointment, which marked the institution of the reform of Gerard of Brogne at Saint-Amand, is an important moment in the history of the monastery. Gautier also thought as much, as is attested by his mention of the event in his prologue. The omission of the deed is something of a surprise, all the more because Gautier does report a parallel gift from the same person (Gautier 21; see PLATELLE, "Le premier cartulaire", p. 310).

²² One fragment of the charter (Gautier 22) of Abbot Radbod (996-1013), 3 charters (Gautier 37, 39-40) concerning the Count of Flanders, Baldwin VII (2 from 1116, 1 from 1117), 1 charter (Gautier 42) of the Bishop of Cambrai, Burchard (1119). On these omissions, see PLATELLE, "Le premier cartulaire", pp. 316-318 (without reference to the omission of Gautier 39).

²³ I leave aside the charter of 1018 by which the Abbot of Saint-Amand, Richard (of Saint-Vanne), grants for rent his property to the monks of Homblières (ed. DUVIVIER, *Actes*, 1, pp. 25-26; *The Cartulary and Charters of Notre-Dame of Homblières*, ed. W.M. NEWMAN, Th. EVERGATES and G. CONSTABLE (Cambridge, Mass., 1990), No. 22, pp. 67-68); this document is only known through the archives of the beneficiary abbey (diocese of Noyon).

Abbacy	Number of charters	Categories of charters				
		(1)	(2)	(3)	(4)	(5)
Radbod (996-1013)	1				1	
Richard of St.-Vanne (1013-1018)	1				1	
Malbod (1018-1062)	7					4
					3	
Foucard-Lambert (1062-1076)	4		1			
					2	
						1
Bovo I (1077-1085)	1				1	
Hugo I (1085-1107)	10	1				
			3			
					5	
						1
Bovo II (1107-1121)	15	2				
			3			
				6		
					4	
Total	39	3	7	6	17	6

- (1) Charters of popes or legates
- (2) Episcopal charters
- (3) Charters of counts
- (4) Abbatial charters or assimilated charters
- (5) "Private" charters

Fig. 1. Repartition of the charters of Saint-Amand (996-1121)

Transmission of charters			
By the cartulary of Gautier	Not transmitted by Gautier and known by		
	(6)	(7)	(8)
1			
	Transmission outside of Saint-Amand		
2	2		1 ¹
1	1		1
1			
		2 (11th c.)	
1			
		1 (11th c.)	1 ²
1			
2	1		1 ¹
1	2 ³	1	2 ¹
	1		1 ¹
2			
3			
6			
1	3		
22	10	4	7

(6) The cartulary of 1300

(7) Isolated copies

(8) Original or scholarly copy of original

¹ Charter (or one of these) known both by the 1300 cartulary and by original or scholarly copy based on the original.

² Charter known both by an isolated copy and by a scholarly copy based on the original.

³ One of these two charters is known both by the 1300 cartulary and by an addition to the Gautier cartulary.

his predecessor, of which 5 remain unknown from other sources;²⁴ 4 documents missing in the cartularies were transcribed, shortly after their creation, in “literary” manuscripts;²⁵ eighteenth century scholarship saved one document from oblivion which until that time had never been copied;²⁶ a final document has survived only because a twelfth century bookbinder used the parchment as a fly leaf.²⁷ All in all, the cartulary of 1117 did not give rise to the loss of the

²⁴ 1. Voluntary servitude submission of Doa (1033, ed. DUVIVIER, *Actes*, 1, pp. 30-31);—2. charter of Malbod concerning the gifts made during his time in Cambrésis ((about 1061?), ed. DUVIVIER, *Actes*, 1, pp. 37-39);—3. gift of Helger and his wife Bertha (1062, ed. DUVIVIER, *Actes*, 1, pp. 40-42);—4. charter of Abbot Hugo I concerning the wrongs of Anselm of Ribemont ((around 1097), ed. PLATELLE, *La justice*, pièce justificative 4, pp. 421-427);—5. voluntary servitude submission of Yvette of Créplaine ((1085-1107), ed. DUVIVIER, *Actes*, 1, pp. 53);—6. charter of Abbot Hugo I concerning the construction of houses in the *atrium* of the monastery ((1085-1107), ed. DUVIVIER, *Actes*, 1, p. 52);—7. charter of Baldric, Bishop of Noyon-Tournai, yielding 10 altars (1107, ed. DUVIVIER, *Actes*, 1, pp. 54-55);—8. charter of Abbot Bovo II concerning the sale of holdings in Frisia ((1115) see PLATELLE, *Le temporel*, p. 159, note 188 ter);—9. charter of the same party concerning the settling of monastery debts ((1115), ed. DUVIVIER, *Actes*, 1, pp. 59-60);—10. another charter on the same subject ((1117) see PLATELLE, *Le temporel*, p. 187, note 10). Documents 2-3 and 8-10 are known only by the cartulary of 1300; other documents (Nos. 1, 4-5 and 7) were still present in the eighteenth-century charter collection. No. 6 had a more complex history: it was added after 1142 to a manuscript of the Gautier cartulary; see PLATELLE, “Le premier cartulaire”, pp. 307, 309 and 326.

²⁵ 1. Valenciennes *Bibliothèque municipale*, MS 176 (hereafter referred to as Val., followed by the shelf-mark of the MS), f. 95v, end of the first part of the Homilies on Ezechiel of Gregory the Great (tenth-century MS): charter of Abbot Folcard-Lambert notifying the reinstatement of church lands to the brothers from benefices alienated by a tenth-century abbot ((1071), ed. PLATELLE, *La justice*, pièce justificative 1, pp. 417-418);—2. Val. 406 (collection of treaties on logic and rhetoric, ninth or tenth century), f. 57: writing of Abbot Hugo I on his problematic dealings with the abbey of Hasnon ((1085-1107) = *De lite abbatiarum Elnonensis et Hasnonensis*, ed. O. HOLDER-EGGER, *MGH SS* 14, pp. 158-160);—3. and 4. Val. 548 (Hegesippus (110?-180?), Latin adaptation of Flavius Josephus, *The Jewish War*), fly-leaves: charter of Abbot Folcard-Lambert concerning the lay provost Herimann ((1062-1076), ed. PLATELLE, *La justice*, pièce justificative 2, pp. 418-419); charter of Abbot Bovo I renewing, in opposition to the provost Herimann, the decision of Abbot Folcard-Lambert ((1082), ed. PLATELLE, *La justice*, pièce justificative 3, pp. 419-421); this concerns eleventh-century transcriptions (see PLATELLE, *La justice*, loc. cit.).

²⁶ Charter of Abbot Malbod recording the regulation of the rights of Adelard of Petegem at Guernignies ((1018-1062), copy by Dom Queinsert after the original, Paris, *BNF*, coll. Moreau 23 f. 10r-v; ed. Ch. DUVIVIER, *Recherches sur le Hainaut ancien* (Brussels, 1865), No. 42, p. 381).

²⁷ Transfer of *Milla* and *Roda* by Abbot Hugo I ((1105), Val. 148, fly-leaf; see PLATELLE, “Le premier cartulaire”, p. 310, note 29; P. LEFRANCQ, “Charte donnée en 1105 par l’abbé de Saint-Amand”, *Bulletin philologique et historique* (1955), pp. 21-26). The manuscript comprises the works of Lactantius; it dates from the ninth century and was completed in the twelfth century, the period when bookbinding began. See on this point, PLATELLE, *Le temporel*, p. 8. Madame Françoise SIMERAY, the author of a dissertation which has not yet been published, *Le scriptorium et la bibliothèque de l’abbaye de Saint-Amand* (see École nationale des chartes, *Positions des thèses*

originals. Only three of the charters copied by Gautier failed to reappear later.²⁸

The Gautier cartulary gives us not only a reduced image of eleventh-century charter production but a distorted one as well. The two charters of voluntary servitude were disregarded and only 3 of the 17 known abbatial charters were transcribed.²⁹ This last category of documents is clearly under-represented, as we realize given the nature of the documents transmitted outside of the cartulary.³⁰

Before we criticize the choices of the cartularist Gautier, we must consider the possibility that the charters had left the archives temporarily, and also the chance that not all of the charters were necessarily kept in the same place. If the ecclesiastical servitude charters were kept separately, as was perhaps the case in the monastery of St. Peter of Gent,³¹ the two voluntary servitude charters—and how many others strays just like them—might have escaped the cartularist. However, we cannot exonerate Gautier completely from his responsibility in the selection of documents. This matter deserves due care.

According to H. Platelle, Gautier stated “in his prologue that he had not transcribed all of the charters that were still extant at that time”.³² However, I find nothing in the text to support such a claim.³³ On the contrary, the cartularist

soutenues par les élèves de la promotion de 1990 ... (Paris, 1990), pp. 151-159) was kind enough to confirm this date for me, as well as a number of others regarding the bindings of manuscripts mentioned in this article. I would like to thank her for her efforts.

²⁸ Gautier 22, 39 and 42. The case of Gautier 37 (charter of the Count of Flanders, Baldwin VII (1116)) is a separate matter because the cartulary of 1300 included an interpolated version of the charter, different from that copied by Gautier. See H. PLATELLE, “Deux chartes comtales relatives à Saint-Amand en date du 16 décembre 1116”, *Bulletin de la Commission royale d'histoire* 126 (1960), pp. 61-82.

²⁹ We mean by abbatial charter a charter in the name of the abbot of the monastery in question (a charter produced, not received). 1. Gautier 25 (1061): notice enumerating property situated in Brabant that Abbot Malbod devolved for charity (ed. DUVIVIER, *Actes*, I, pp. 33-36);—2. Gautier 28 (1085-1097?): state of revenues allocated to the endowment of monastery offices; on this document, which is known in two versions, see PLATELLE, “Le premier cartulaire”, pp. 308-309;—3. Gautier 44 (1119-1120): charter of Abbot Bovo II concerning the transmission of the position of the lay provost.

³⁰ See *supra*, notes 23-27.

³¹ See DECLERCQ, “Le classement des chartriers”, p. 337.

³² PLATELLE, “Le premier cartulaire”, p. 310: “Gautier avait déclare, dans son prologue, qu’il ne transcrivit pas tous les actes alors existants”.

³³ A passage in the prologue could lead to misunderstanding: “*Tamen ex his quae subscripta sunt aliquatenus conjici poterit tantarum affluentia rerum, quamvis neque sint omnia scripta et ex his quae scripta sunt, multa sint seu per negligentiam praelatorum, seu par violentiam malorum subtracta*”. But in this sentence, the neuter plural subject of the verbs *subscribere*, *scribere* and *subtrahere* does not refer to the charters (which either would or would not be included in the cartulary), but rather to the property given (which either would or would not be the object of the

says that his mission was to preserve the records that had survived until his period, lest they be lost due to decay.³⁴ The discrepancy between the professed goal and its realization is all the more evident. Nonetheless, it is clear that Gautier was primarily concerned with the fate of the “charters and privileges” which demonstrated the generosity of the great (“*reges et principes*”).³⁵ Many of the documents in question have seals, and Gautier invites his readers who might have some doubts about the accuracy of his copies to consult the originals “which carry the seals of kings, princes, Roman pontiffs and certain bishops”.³⁶ Thus, if Gautier does not purposely exclude any category of charters, we do note his preference for documents of authority and those that reflect the (good) relations between the monks and the high and mighty. It is perhaps for these reasons (seals and interest in the charters of nobles) that Gautier left aside most of the abbatial charters. They bore no seals and they often concerned sordid disputes with the local aristocracy (lay provost, *advocatus*). In addition, perhaps he found that their age was not sufficiently venerable to make up for the lack of the other two criteria. Other considerations might also have played a role. In the opinion of H. Platelle, Gautier’s selection stemmed from a disagreement with the financial policy of his abbot, Bovo II, whom he would soon succeed; consequently, he decided that three charters reflecting Bovo’s management were not worthy of his cartulary.³⁷ If this hypothesis is correct for these charters, it cannot be applied to the omissions of older documents, for which it is difficult to furnish convincing explanations. These lacunae do not show a very clear-cut attitude on the part of the cartularist.³⁸ In conclusion, if we only had the 1117 cartulary, we would miss a whole range of documents of

legal document). At any rate, PLATELLE, who quoted and commented on the passage (*Le temporel*, p. 186), was not mistaken about its meaning. Thus, the mystery remains.

³⁴ PLATELLE, “Le premier cartulaire”, p. 319: “*Ideo priusquam vetustate penitus consumentur, in hoc codice ea quae reservata sunt nostris temporibus (quaedam enim vetustate, quaedam barbarica vastatione perierunt) transcribimus*”.

³⁵ PLATELLE, “Le premier cartulaire”, pp. 318-319: “*... quanta reverentia, quanta liberalitate reges et principes illum excoluerint, ac de suis rebus ditaverint et amplificaverint, inter caetera maxime testantur monumenta cartarum et privilegiorum, quae diligenter ab eis facta nobis ad memoriam sui ac munimen hujus loci conservanda reliquerunt*”.

³⁶ PLATELLE, “Le premier cartulaire”, p. 319: “*... et si quid inde dubitaverit, de veteris cartis, ubi sigilla regum, vel principum ac romanorum pontificum et quorundam episcoporum adhuc sunt impressa, testimonium veritatis assumat*”.

³⁷ See *supra*, note 24, Nos. 8, 9 and 10. On the financial difficulties of Saint-Amand and Bovo II’s policies, see PLATELLE, *Le temporel*, pp. 185-191.

³⁸ On this issue, see PLATELLE, “Le premier cartulaire”, pp. 310-311. One example of the difficulty: it is not clear why Gautier transcribed one of the summaries of Malbod (Gautier 25; see *supra*, note 29) and not the other (see *supra*, note 24, No. 2).

Saint-Amand, namely the “trivial”, in all their breadth. Trivial documents did indeed have a lesser “chance of survival” than others.³⁹

These neglected charters owe their survival to “isolated” transmittance, not an organized one. It was common in the Middle Ages to copy charter texts in “sacred” books, liturgical manuscripts or those used for important moments in the life of the community.⁴⁰ The idea was, as is suggested by certain remarks,⁴¹ to give some documents extra protection so as to guarantee their perpetuity and their enforcement. Some charters of Saint-Amand protected in this way ratified agreements with turbulent lay neighbours; they certainly deserved extra security. But if Gregory the Great may easily be thought of as a guardian, it is difficult to see how rhetorical treatises or the Latin adaptation of Flavius Josephus could assume a prophylactic function. It is probably just circumstances that placed certain writings in certain volumes. It should be mentioned that the very transcription of these documents, which often took place not long after their composition suggests the possibility that the people of the time were conscious of the fragility of such charters. Nonetheless, the scattered order of these copies attests more a personal interest than an institutional preoccupation.

The “isolated transmittance” of the charters of Saint-Amand also poses the question of voluntary destruction and “recycling” of parchment. Starting in the twelfth century, the period which marked the flourishing of the scriptorium of Saint-Amand,⁴² the charter collection was resorted to for the parchment required to cover new manuscripts.⁴³ This is how it occurred that an original abbatial charter is only known today by its insertion in a manuscript binding.⁴⁴ However, an examination of another case leads to a more restrained conclusion. To bind a manuscript of the *Moralia in Job*, a chirograph in the name of Abbot Hugo I, or more exactly one of its parts, was used as a fly-leaf. In all probability

³⁹ See on this heuristic question A. ESCH, “Überlieferungs-Chance und Überlieferungs-Zufall als methodisches Problem des Historikers”, *Historische Zeitschrift* 240 (1985), pp. 529-570.

⁴⁰ The “unorganized” transcription of charters, which was quite a widespread phenomenon, has received little scholarly attention. On charters copied in liturgical books, see J.-L. LEMAITRE, “Les actes transcrits dans les livres liturgiques”, in: *Les cartulaires*, pp. 59-78.

⁴¹ O. GUYOTJEANNIN, “*Penuria scriptorum*”: le mythe de l’anarchie documentaire dans la France du nord (X^e–première moitié du XI^e siècle)”, *BEC* 155 (1997), pp. 11-44, esp. p. 30.

⁴² Until the publication of the dissertation of F. SIMERAY (see *supra*, note 27), see: A. BOUTEMY, “Le scriptorium et la bibliothèque de Saint-Amand d’après les manuscrits et les anciens catalogues”, *Scriptorium* 1 (1946-1947), pp. 6-16; F. SIMERAY, “Le scriptorium de l’abbaye de Saint-Amand au milieu du XII^e siècle”, *Valentiana* 4 (Dec. 1989), pp. 6-10.

⁴³ The monks of Saint-Amand also sacrificed documents other than charters (a polyptic fragment, a death roll); see PLATELLE, *Le temporel*, p. 8.

⁴⁴ Charter referred to above (*supra*, note 27). The text of this charter contains several drafting errors; perhaps it has not been authenticated. For a clearer example, see *infra*, note 46.

the monks kept the other part of the chirograph in the charter collection, because it was still there in the eighteenth century. The sacrifice of the document for the binding was done without any real significance in other words.⁴⁵ Furthermore, if the monks had two copies of the charter they could use as exemplars, that means they had got back the copy destined for the other party, from which we may conclude that the document had lost its legal pertinence. Similarly, an episcopal charter reused for a binding might have been a document that had not been authenticated, in other words, it was simply a piece of parchment and not a true charter.⁴⁶ We see that the charter collection had not been pillaged, rather that parchments judged no longer necessary were reused; perhaps they had already been discarded. This suggests a reflection, if only brief, on the use of archives and their life span. But such a reflection in itself assumes no on-going archival maintenance. Perhaps it was episodic, simply motivated by the need for materials. In any case, the examples we have cited demonstrate that not all charters were essentially intended to be conserved for ever.

Even earlier than the Gautier cartulary, there is evidence of management of written material through the destruction of archival documents. Around 1061, Abbot Malbod (1018-1062) set forth in a charter issued in his name, a list of gifts made to the monastery by the faithful during his abbacy.⁴⁷ It consists of four notices of donation, preceded by a long preamble on the importance of writing, the only protection of the gifts of the faithful against the rapacity of those wolves hostile to the church, and followed by an anathema formula against such wolves. When we read the preamble, we are inclined to believe that these gifts had not been formally made by charter; at most there might have been some informal notices giving the names of the witnesses, the location and a few chronological indications, all elements included by the scribe who we

⁴⁵ This concerns the above-mentioned notice of Abbot Hugo I (see *supra*, note 24, No. 4). A part of the chirograph makes up the fly-leaf of MS Val. 33 (Gregory the Great, *Moralia in Job*, handwriting and binding from the twelfth century); Dom Queinsert (eighteenth century) described and transcribed the other half (*BNF*, coll. Moreau 66, f. 212r-214r) which was then found in the charter collection of Saint-Amand.

⁴⁶ Charter of Baldric, Bishop of Noyon-Tournai, yielding 12 altars to Saint-Amand (1107). The fragment was the right section of a chirograph and was used as a fly-leaf for MS *BNF*, lat. 2012 (a MS from the 1120s; binding from the twelfth century); the document has no trace of a seal. A slightly different version of the document is known from the cartulary of 1300 (see *supra*, note 24, No. 7) and by a copy Dom Queinsert made of the original (*BNF*, coll. Moreau 42, f. 225r-v). The status of the fly-leaf of lat. 2012 is not clear (invalidated charter?) and deserves further investigation. See S. SOLENTE, "Une charte-partie de 1107 dans un manuscrit de Saint-Amand", *BEC* 94 (1933), pp. 213-217.

⁴⁷ Ed. DUVIVIER, *Actes*, I, pp. 37-39 (document not transcribed in the Gautier cartulary).

feel was very concerned about the names of the witnesses.⁴⁸ Malbod was concerned about good management and was aware that it was achieved by written records; according to this reasoning, he decided to put on parchment what had not been written down before, or only insufficiently written before.⁴⁹ But this is not the case! We still have the initial deed for one of the gifts, that of Ermentrudis, the widow of Gautier, Castellan of Cambrai, a deed dated 1041 and issued in the name of the donor.⁵⁰ It is not unreasonable to think that other related gifts were the subject of similar deeds, and that the parchments which had become unnecessary due to the abbey's *pancarta* disappeared afterwards. It is a bit of a surprise perhaps that only the charter of 1041 was preserved. Was that just chance? That is not improbable, but we can imagine good reasons for this happy fate. Gautier the castellan, who was a close enemy of the Bishop of Cambrai, Gerard, was an important figure in regional politics. The dramatic events surrounding Gautier's death and the vicissitudes that preceded his burial in the cloister of the monastery—so many events of which the *pancarta* whispers not a word but which the first deed calmly reveals—caused considerable commotion.⁵¹ The matter was most memorable. Let us add a more down-to-

⁴⁸ After evoking the wild dogs, enemies of the Church of God, who try to steal the property that the faithful have donated for their salvation, the preamble continues: “*Unde ab antiquis salubre repertum est consilium, ut ea que a religiosis quibusque ad loca traduntur sanctorum, qualiter vel a quibus tradantur, per kartam et atramentum notitie mandetur posterorum, quatinus contra inhiantium fauces firmum propugnaculum, ne suis moliantur addere prediis sive familiis que coram bone memorie seu honeste fame testibus collata sunt in utilitatem Dei fidelium. Quocirca ego frater Malbodus, abbatum ultimus, talia cavens et mala in die conspiciens augmenta sui capere, decrevi apicum notamine, ad agnitionem futurorum, beneficia mittere que sancto Amando nostro tradita sint tempore, pigrum ducens et incommodum ea inerti otio tradi aut incurie*”. According to Malbod, he was the one who decided to write down the legitimate gifts (in the presence of witnesses) made previously, but during his own time.

⁴⁹ See the end of the passage quoted in the preceding note. PLATELLE, *Le temporel*, pp. 122-123, in speaking of this record and the record describing the service of charity (1061), believes that “these two lists of property announce the cartulary which would be drawn up fifty years later”.

⁵⁰ Charter by which Ermentrudis, the widow of Gautier, Castellan of Cambrai, gave all that the latter possessed in Bracheux (*pagus* of Cambrai), added a *curtile* and a tithe to Vitry, as well as a male and female serf; ed. DUVIVIER, *Actes*, I, pp. 31-33 (Gautier 24); see PLATELLE, *Le temporel*, p. 146.

⁵¹ The most detailed report of the matter is given by the *Annales Elnonenses*, ed. Ph. GRIERSON, *Les annales de Saint-Pierre de Gand et de Saint-Amand* (Brussels, 1937: *Commission royale d'Histoire*), a° 1041, pp. 155-156; see DUVIVIER, *Actes*, I, pp. 31-32. Gautier, who had been excommunicated, was mortally wounded while he was praying at the door of the cathedral church. Despite his repentance just before his death, the Bishop of Cambrai refused to have him buried in Christian soil. Ermentrudis raised havoc in the region. Under pressure from the Count of Flanders, Bishop Gerard reversed his decision; the widow transferred the body of her husband to the monastery of Saint-Amand, where he was buried in the presence of the bishops of Amiens

earth motive to end with: the *pancarta* omitted part of the gift of Ermentrude; it did not replace the charter of 1041, in other words.⁵² Like the cartulary fifty years later, but following different principles, Malbod's memorial writings tend to hide the existence of written documents, direct evidence of which subsisted only in shreds. Be that as it may, if Malbod was not the instigator of a conversion to written record, we readily recognize a change of writing practice during his time, a point which we shall come back to later.

In conclusion, the example of Saint-Amand shows that the strategies of management or development of the charter collection resulted in a thinning of the materials of the eleventh century, which tended to mask a whole range of charter writing (abbatial and private charters). What is more, this selection is masked to a certain extent by the mediating sources; it is only the chance of transmission that lifts the veil on this hidden production.

2.2. *Saint-Riquier*

From an archival point of view, the Saint-Riquier situation is unusual and presents many contrasts. The charter collection was destroyed in 1131 as a result of arson set by the Count of Saint-Pol, but two complementary "mediators" are still extant, which give us some idea of its contents. One is the chronicle of the monastery, written by Hariulf in 1088 and expanded by a final chapter in 1104; it includes *in extenso* a good number of documents that had been in the charter collection. Secondly, we have the rare good fortune to have an inventory of the charter collection which was drawn up in 1098, the first year of the abbacy of Anscher.⁵³

and of Thérouanne and the Countess of Flanders, Adela. The deed of 1041, formulated very carefully by a monk of Saint-Amand in the name of Ermentrudis, says nothing of the widow's vengeful action. On the Cambrai context, in particular the relations between the castellan, the bishop and the count of Flanders in the eleventh century, see the recent study by L. KÉRY, *Die Errichtung des Bistums Arras 1093/1094* (Sigmaringen, 1994: *Beihefte der Francia* 33), pp. 226-241 (with bibliography); also H. PLATELLE, "Le mouvement communal de Cambrai de 1077 et ses destinées ultérieures", in: ID., *Terre et ciel aux anciens Pays-Bas* (Lille, 1991), pp. 243-261 (reprint of an article first published in 1982).

⁵² Ermentrudis had given a male and female serf to the monastery. The charter of 1041 was a deed conferring the affiliation of those people. It would seem that servitude charters were accorded particular attention.

⁵³ Hariulf, *Chronicon Centulense*, ed. F. LOT, *Hariulf, Chronique de l'abbaye de Saint-Riquier (I^{er} siècle-1104)* (Paris, 1894: *Collection de textes pour servir à l'étude et à l'enseignement de l'histoire*). The 1098 inventory was published by F. LOT (*ibid.*, Appendice 9, pp. 314-318), after an edition by Mabillon (there is no manuscript tradition).

The Hariulf chronicle includes 33 charters; the inventory lists 71, divided into five sections.⁵⁴ The first section has no title and records the Carolingian documents which preceded the time that Engelard was abbot (about 980-1007); the next four cover the successive abbacies of Engelard, Enguerrand (... 1017-1045), Gervin I (1045-1075) and Gervin II (1075-1096). Each document is reviewed in a more or less summary fashion. There are quite detailed descriptions of some of the documents—such as the group of charters concerning possessions around Liege—most of the charters are commented upon only briefly giving, as in dorsal notes on originals, the location, object and the party concerned, or one of these remarks, or two of these. The legal procedure is specified in a minority of cases. The typology of the charter led to an elaborate vocabulary during the Engelard period,⁵⁵ which was reduced in the eleventh century, with only rare exceptions, to the single word *testamentum*. The author of the charter is normally indicated if he was a person of authority; abbatial charters are rarely indicated as such. In other words, it is difficult to make use of the inventory, even if the work of Hariulf allows us to better understand the work of the archivist.

The inventory clearly distinguishes two periods in the written memory of Saint-Riquier. First of all, there was the period of the *praecepta*, which corresponds in broad lines to Carolingian times. The uniform corpus contains 13 documents, 11 of which are Carolingian diplomas. The classification of charters by abbacy starting with Engelard, goes hand in hand with the sudden increase in diversified materials (10 documents). This path was amply confirmed by the following abbacies (21 for Enguerrand, 22 for Gervin I). The four abbacies cover a long eleventh century (from approximately 980 to 1096) which are reflected in 58 documents, or more than 80% of the indicated charter material.

For the reasons suggested above, our knowledge of these 58 charters is quite uneven. The name of the author (as used in diplomatics) is given for only 32 of them, either in the inventory (26 charters) or in the transcription of Hariulf (8 charters). These 32 charters may be divided into 11 charters of secular

⁵⁴ For a first approach to this inventory and the work of Hariulf, see L. MORELLE, "Les chartes dans la gestion de conflits (France du nord, XI^e-début du XII^e siècle)", *BEC* 155 (1997), pp. 267-298, esp. pp. 268-276. The development that follows anticipates a more detailed study of the inventory as part of an examination of monastic charter collections in northern France (tenth-eleventh centuries). Some of the findings given here will be explained in greater detail.

⁵⁵ *Conditio, confirmatio, conventio, epistola, petitio, praeceptum*.

prelates,⁵⁶ 4 royal diplomas,⁵⁷ 2 ducal charters,⁵⁸ 6 charters of counts,⁵⁹ 1 seigniorial charter, 8 abbatial charters.⁶⁰ We add to this list two *descriptiones* which are probably objective writings, one concerning the *tortitudines* conveyed by the Count of Ponthieu, the other, symmetrically, listing the *consuetudines* that were granted him.

The authors of the other 24 charters are unknown. There may have been some charters of counts or of “private” donors among them, even though that category is not at all attested in the materials still extant. But it must have been primarily abbatial charters. If we look at the structure of the synopses of the inventory we might be able to deduce the existence of 15 charters at least that had to do with the temporal administration of the abbey.⁶¹ This group of abbatial charters, now enlarged by the eight already identified, constitutes the largest part of the charter collection in 1098, at least one third of the documents, and this is probably an underestimate.

What was the attitude of Hariulf when faced with this mass of documents? Let us look at the figures according to each category of documents. For the “Carolingian” period, Hariulf reproduced all of the *praecepta* (11 in all), rejecting only the two *precarie*. For the “eleventh century”, he left out 3 of the 11 charters of secular prelates,⁶² 2 of the 4 royal diplomas,⁶³ 2 of the 6 charters of counts,⁶⁴ the seigniorial charter, and the two *descriptiones*. As far as the abbatial charters are concerned, 2 of the 8 “identified” documents were omitted but

⁵⁶ 2 pontifical charters, 2 charters of the bishop of Reims, 7 episcopal charters (Liège: 3; Amiens: 2; Beauvais: 1; Noyon-Tournai: 1).

⁵⁷ 2 diplomas of Henry I, 1 of Philip I, 1 of William the Conqueror.

⁵⁸ 2 charters of the Duke of Normandy (Richard II, William).

⁵⁹ 5 charters of the Count of Ponthieu, 1 charter of Odo II, Count of Beauvais and of Blois.

⁶⁰ These are charters of the Abbot of Saint-Riquier.

⁶¹ 10 of the 24 charters have a summary something like the following: “*Item aliud (testamentum) cum Tali*” (none of the summarized charters gives the name of the author); 9 times out of 10, this *Talis* is a lay person, often reduced to a simple name, and the formulation with *cum* indicates that it is not a gift, but rather a *conventio*; in such a case it is the monastery, the co-contracting party, which seems to be the proper party to draw up the document. In one final case, the partner of Saint-Riquier is an abbot (“*Item aliud cum Heriberto abbate Latiniacensi*”); it is not impossible that the document would have been drawn up by the beneficiary establishment. 13 “anonymous” charters are said to be “*de Tali loco*” or “*de Tali re*”, or “*de Tali persona*”. At least one third of these documents were abbatial charters if we compare this group to the 6 documents, summarized in this way, which were copied by Hariulf (2 charters of counts, 4 abbatial charters).

⁶² 3 episcopal charters (Amiens, Beauvais, Noyon-Tournai) concerning “*personatus*” (2) and a dependent church.

⁶³ 1 diploma of Henry I, 1 of Philip I.

⁶⁴ 1 charter of the Count of Ponthieu, 1 of the Count of Beauvais and Blois.

we must add to them, as we have already seen, about 15 documents similarly left aside, or three-quarters of the whole category. This category suffered particularly, in other words, by Hariulf's historical project. But it was not the only one to suffer, far from it: the charters stemming from the *auctoritates* also underwent a severe pruning which spared neither the King of France nor the bishops.

Insofar as we are able to draw valid conclusions from the documentation we have (the rejected documents are not well enough known) and without prejudice to a more detailed examination, the documentary selection made by Hariulf seems to have been based on several principles: 1) The diplomas of Carolingian kings, responsible for the founding, wealth and prestige of the monastery, were the basis of its history; they are transcribed without exception and punctuate a history which, without their aid, would be reduced to very little indeed. 2) For the "contemporary" period which benefited from much greater and more diversified documentation, it was more a matter of choice, and we have the impression that Hariulf wanted to equalize the number of documents according to each abbacy as if out of literary taste.⁶⁵ 3) Using the same logic, Hariulf probably sought to avoid redundancies; this would explain his lack of interest in episcopal charters concerning the statutes of parish churches, and above all the sacrifice of many abbatial charters which it would seem ratified many *mainferme* contracts.⁶⁶ 4) Finally, Hariulf seems to have decided to leave out of his chronicle those writings that reflected difficult negotiations, compromises of customs and other arrangements on the office of *advocatus*, and many documents buried in the detritus of the century and which did not underline the triumph of monks over their enemies.⁶⁷ We must not forget, of course, the subjectivity of Hariulf as an individual and historian, who did not hide his aversions, not hesitate for example to doom to *damnatio memoriae* the administration of his abbot Gervin II, whose charters he considered, though few in num-

⁶⁵ He retained 7 documents out of 10 for Engelard, 6 out of 22 for Enguerrand, 9 out of 21 for Gervin I.

⁶⁶ *Mainfermes* were *precariae datae*. A synopsis in the inventory explicitly describes a document as *mainferme*. Only one *mainferme* (not indicated as such in the inventory) was copied by Hariulf (abbatial charter of 1046; *Chronicon*, IV, 21, pp. 233-234), of a number that cannot be stated precisely, given the terseness of the synopses. Other charters do not use the word *mainferme*, but do show its characteristics (e.g. IV, 7, pp. 193-194).

⁶⁷ This very clearly has to do with a *precarium* granted by the abbot-count Helgaud (tenth century) to a certain "military man". Hariulf (*Chronicon*, III, 10, p. 119) does not give the text, nor does he speak of it very precisely ("*Sed nihil eorum hic ponimus, quia non honoris augmentum, quin potius materiem doloris praestarent*"), but before making any comments, he does say: "*Cujus facti precaria cartula a nobis habetur*".

ber, not worth the trouble of copying.⁶⁸ This attitude was not all that different from that of the cartularist Gautier, according to H. Platelle, towards the charters of his abbot Bovo II.⁶⁹ As in Saint-Amand, Hariulf's exploitation of the charter collection led to the elimination of most of the trivial documents, among which we assume many abbatial charters. Even if the projects of Hariulf and Gautier were not identical and even if their choices did not stem from the same motives, the consequences were similar for a significant share of the charter material.

2.3. Montier-en-Der

To a certain extent, the case of Montier-en-Der is similar to the preceding ones. Once again, our knowledge of the charter collection comes from a cartulary which was made in about 1127, which makes it more or less contemporary to that of Saint-Amand. Nonetheless, in contrast to the collection of Saint-Amand, the compilation of Montier-en-Der has been well preserved, although it has not yet been published!⁷⁰ Furthermore, just like in Saint-Riquier, this intermediary is very important; there are very few originals (or supposed originals) that still exist today.⁷¹ At the same time, the part of the indirect tradition that does not depend upon the first cartulary is insignificant. There is a clear

⁶⁸ Hariulf, *Chronicon*, IV, 36, p. 283: "*Sunt et quaedam utilia quae chartarum indicio peregrisse dignoscitur, sed tam pauca, ut in eorum explanatione tempus terere non placeat*". The formula refers to the actions and not the written charters, of course, but we sense that Hariulf correlates the two. This *damnatio memoriae* is historiographic and not archival because of the reference to the existence of charters (see MORELLE, "Les chartes", p. 271 note 19). Gervin II († 1104) became bishop of Amiens between 1086 and 1091; he was forced to give up the abbacy around 1096, and the episcopacy around 1102 (see J. PYCKE, "Gervin II", in: *Dictionnaire d'histoire et de géographie ecclésiastique* 20 (Paris, 1984), cols. 1098-1100).

⁶⁹ The tense relationships between cartularist-historiographer and abbot are not exceptional. On the example of Farfa (Gregory de Catino vs. Berard II (1090-1099)), see Th. KÖLZER, "*Codex libertatis: Überlegungen zur Funktion des 'Regestum Farfense' und anderer Klosterchartulare*", in: *Il ducato di Spoleto: Atti del 9 ° Congresso internazionale di studi sull'alto medioevo* (Spoleto, 1983), 2, pp. 609-653, esp. pp. 614-615.

⁷⁰ Archives départementales de la Haute-Marne, 7 H 1. On this cartulary, see L. MORELLE, "Des moines face à leur chartrier: Étude sur le premier cartulaire de Montier-en-Der (vers 1127)", to be published in the proceedings of the colloquium on "Les moines du Der" (October 1998). The details that follow take up some of the elements developed in that study. See pp. 192-193, figure 2.

⁷¹ 11 documents for the period up until 1127: 1 Carolingian precept, 6 pontifical privileges (1 of which is a forgery (Alexander II) and 1 a forged charter (Honorius II)), 2 episcopal charters and 2 charters of counts. Details are given in the study referred to in the preceding note.

contrast to the two other cases, however. For one thing, the amount of material collected is much greater than what we have seen up until now: 162 documents, which amounts to 2.7 times that of Saint-Amand (61 documents) and 2.3 times that of Saint-Riquier (71 documents). In addition, the work of the anonymous cartularist does not seem to have resulted in any filtering of documents as we saw in Saint-Amand and Saint-Riquier.

In Montier-en-Der, the influence of the cartularist seems to have been less marked than in Saint-Amand. He seems to have not wanted to model the collections of charters according to his own point of view, rather to be a “transmitter” without an *a priori* set of values for one document or another in the charter collection. The classification he used is chronological, just like that of Gautier’s cartulary, but we do not see a time progression from document to document. Just as in the charter collection of Saint-Riquier as described in the inventory of 1098, the charters of Montier-en-Der are simply grouped according to each abbacy. A more thorough analysis of the groups of documents suggests that it was the charter collection that imposed its order on the cartularist who was a bit overwhelmed by the scope of his enterprise, and not the other way around that it was the cartularist who tried to impose his reason on the charter collection.⁷² This cautious approach to the primary material is seen in my opinion in the absence of any real selection of documents. Some omissions can be found, but they are rare and we can attribute them to incidental, “technical” reasons. The infrequency of such cases does not seem to be imputed to the lack of elements of comparison (originals or independent indirect tradition). Furthermore, the number and typological variety of transcribed documents leads us to believe that the cartulary reflects quite well the contents of the charter collection.

It is remarkable that the anonymous collection of Montier-en-Der is filled, at least starting with the eleventh century, with charters that were not issued by “authorities”. The abbatial charters which were so under-represented by Gautier in Saint-Amand or by Hariulf in Saint-Riquier are given a proportionate place here. For the period after approx. 968 (beginning of the abbacy of Adso), they make up 40% of the transcribed documents (56 of 138), which proportion rises to 47% (44 of 92 documents) if we consider the “eleventh century” as running from approximately 992 to the beginning of the 1090s. (Other) “private charters” were not sacrificed any more; for the same periods they constitute 13% (18 of 138) and 16% (15 of 92) of the stored documents, respectively. In short, the cartulary of Montier-en-Der does not give a partial and distorted image of the charter collection which the compilations of Saint-Amand and Saint-Riquier do. The “realistic” and faithful image that it gives corresponds to the one which

⁷² The cartulary does not have a preface.

Period or abbacy	number of charters	royal charters	papal charters	episcopal	
				Troyes	Châlons
Before Adso	24	13	1		1
Adso (ca. 968-992)	6	1		2	
Berenger (ca. 992-1016...)	2		1		
Dudo I (...1027-1034/35)	19	1		1	
Milo (ca. 1034/35-1049)	8			1	
Bruno (1050-1085)	57		12	3	1
Dudo II (ca. 1085-1091?)	6				
Nocher	0				
Roger (1097-before 1133)	40 ²		4	7	3
Total	162	15	18	14	5

¹ Notices and "informal" documents (13), *pancarta* (1), missive letter (1), charter of legate (1).

² Since the cartulary dates from ca. 1127, numbers of the abbacy of Roger do not include the period after this date.

Fig. 2. Distribution of charters in the cartulary of Montier-en-Der (ca. 1127)

charters		abbatial charters	charters of counts	“private” charters	others ¹
Toul	Langres				
			1	6	2
			2		1
		1			
		10	2	4	1
1		6			
	1	21	3	11	5
		6			
1		12	3	3	7
2	1	56	11	24	16

we obtained for the two other establishments (and a very imperfect image) only after careful corrections and a critical examination of the evidence.

It is clear that archival and historiographic approaches differed from one monastery to another, that is to say, that different approaches towards the charter collections were made, using different filtering strategies for charter material. We must not forget that these strategies were the result of individuals and individual temperaments and that they stemmed from local traditions and events as well as personal competencies. No charter collection can be seen *a priori* as an example for all others.

3. Renewal of Charters and Archive

The preceding study has led us to conclude that the “mediators” have left us more documentation for the eleventh century than for previous centuries. However, the amount varies according to the material of a given institution. For Saint-Riquier the period of approximately 980-1098 has 4.5 times as many documents as the preceding centuries.⁷³ For Montier-en-Der, a similar period (992-1097)⁷⁴ has 3 times as many documents. For Saint-Amand however, there are only 2 more documents for the long eleventh century (996-1107) than for the preceding age.⁷⁵ The more faithfully the tool reflects the charter collection, the greater the differences between periods. As we have seen, fate has smiled upon the historian at Saint-Riquier and Montier-en-Der. In the first case, we have an inventory of the charter collection drawn up in 1098, in the second a cartulary which was early (1127) and not very selective. In contrast, at Saint-Amand it is more difficult to imagine what was in the charter collection at the time that Gautier made the cartulary (1117). The cartularist has clouded our vision of the charter collection by leaving aside writings that we can perceive but not quantify. In brief, the less the mediator intervenes, so it seems, the greater the share of the eleventh century in the charter collection.

The examples of Saint-Riquier and Montier-en-Der suggest an archival legacy passed from generation to generation throughout the eleventh century which does not give the impression of a progressive “clarification” of the charter collection. We do not find any over-representation of the most recent abbas at least. At Montier-en-Der the documents that have been conserved for the

⁷³ 58 documents as opposed to 13, or a proportion of 4.46.

⁷⁴ 92 documents as opposed to 30, or a proportion of 3.06; however, if we look at the period 968-1097, we count 98 documents as opposed to 24, or a proportion of 4.08.

⁷⁵ 24 documents as opposed to 22.

abbacy of Roger (who probably initiated the making of the cartulary), as many as there are (40 documents, 1.3 document per year), are fewer than for that of Bruno (1050-1085) for whom there are 57 documents (1.6 document per year). Even more remarkable, the period of Gervin II at Saint-Riquier (1075-1096) yields the least for the century (only 5 documents recorded in the inventory); the chronicler Hariulf cannot resist a disparaging remark about this paucity which he attributes to the mediocrity of the abbot.⁷⁶ This is a very interesting remark: to the alert eyes of Hariulf, what has been preserved in the charter collection is a faithful mirror of the proportionate numbers that had been stored. On the other hand the production at Saint-Amand is seen in a different light, seeing that it was clearly more abundant in the generation that preceded the “cartularization”. The periods of Hugo I (1085-1107) and Bovo II (1107-1121) alone represent 64% (25 documents) of the production preserved after 996.⁷⁷ Was the leap in numbers of documents really so great and so late? We may suspect an over-representation of recent times, due to the fact that the material from this period responded better to the interests of the cartularist, and an under-representation of earlier decades, perhaps due to the hazards of the history of the charter collection. Or perhaps the transmission of archival material throughout the eleventh century was more chaotic in Saint-Amand than in the other two monasteries.

However, we find a common phenomenon in all three places: materials *prior* to the eleventh century all give the impression of a legacy in which there is a sometimes overwhelming majority of documents of authority (in particular *praecepta*). This phenomenon is very clear in Saint-Riquier but also evident in Saint-Amand and even Montier-en-Der despite the few private Carolingian charters preserved there. These residual corpora do not reflect in any way a documentary production which we will ever be able to grasp; they are, at best, what still remained at the end of the eleventh century from documents that dated from before that century.⁷⁸ But when did the losses occur? It is tempting to establish the date of those losses as the “moment” that the documentation changed in nature and in amount. Such a watershed occurred “about the year 1000”. At Saint-Riquier the very clear break between the time of the *praecepta* and that of the *testamenta* is seen starting with Engelard (approx. 980-1007...) and continues under his successor Enguerrand, who resigned in 1045. At

⁷⁶ See *supra*, note 68.

⁷⁷ Hugo I: 0.45 documents per year; Bovo II: 1.07 documents per year. Earlier abbacies oscillated between 0.12 and 0.28 per year on average.

⁷⁸ I say “at best”, because we are less certain about Saint-Amand (due to our means of investigation) than about Saint-Riquier and Montier-en-Der.

Montier-en-Der we see a change during the time of Adso († 992) and his successor Berenger, but it was the abbacy of Dudo I (...1027-1034/35) that truly marked the break. At Saint-Amand, where we find less of a quantitative change than a qualitative one between the “new look” production and the old, the long abbacy of Malbod (1018-1062) seems to testify to a documentary shift. Would the men of the year 1000 have more or less brutally sorted their past and carefully conserved the modern documents that they stored in their charter collections? I admit that I have difficulty imagining such an attitude when there are so many indications to the contrary. The monks of the eleventh century seem to have had a real concern to trace with the help of writing the historic identity of the institution; this is attested by their frustration over the lack of written documents and by the importance they placed in *memoria*.⁷⁹ Given these facts, it would be surprising if the eleventh century devoted more energy to sorting out old documents than the ones they were producing. I find it more plausible that the men of the eleventh century transmitted what they had received neither better nor worse than what they produced themselves. In my opinion there were not many more Carolingian documents at Saint-Riquier in 998 than a century later in 1098, the time of Hariulf and the inventory of the charter collection.

During the ninth and tenth centuries, the Viking invasions, wars and changes in the conditions of institutions were deleterious to the good transmission of archives. We are not surprised that the precepts of rulers and other documents of authority or which defined the “identity”⁸⁰ of the institution would have survived better than other *instrumenta cartarum*. If circumstances required making a choice from the available parchment, priority was given to those with an incontrovertible recapitulatory and statutory character; *cartae* of a more incidental nature, which had perhaps also been less carefully conserved, could be recycled.⁸¹ We note in passing that the existence of a clear charter typology made selection easier and perhaps easier to accept. If the Carolingian period wrote down a great deal, it must also have destroyed a great deal.

⁷⁹ See GUYOTJEANNIN, “*Penuria scriptorum*”; MORELLE, “Histoire et archives”. Clearly Hariulf was lacking sources for the abbacy of Helgaud: he does note the existence of a *precaria* concerning that abbot, but does not copy it because it did not add to the prestige of his institution (see *supra*, note 67). The avid historian with his love of sources notes the document, but the monk of Saint-Riquier frowns on publishing it.

⁸⁰ Such as the charters of the founders or those which illustrate important moments in the history of a community.

⁸¹ This assertion is only conjectural. Ascertaining the fate of Carolingian archives is a task riddled with problems (the hierarchy of the writings, the value of the originals, the level of recording, etc.) which we cannot go into here.

The preservation of charters would seem to have fared better during the eleventh century than the preceding one. What were the reasons for this? Fewer accidental losses, fewer catastrophes? That is a possibility. At Montier-en-Der no source reveals or suggests such an event, and at Saint-Riquier the arson which destroyed the archives in 1131 occurred 30 years after the chronicle of Hariulf and the inventory of the charter collection.⁸² At Saint-Amand, a fire completely ravaged the churches and cloistral buildings in 1066, although we do not know whether the charter collection was affected and thus whether we should attribute the somewhat dislocated character of the charter collection to that catastrophe.⁸³ The threat of fire was as great in the eleventh century as it was in the ninth or tenth centuries, but the monks had less fear of the pillaging of soldiers and the threat of having to flee the monastery, abandoning some or all of their treasury of charters.⁸⁴ Nor is it impossible that the monks had learned the lesson of their Carolingian predecessors and tried to protect their archives better.

Such (hypothetical) care would only be the concrete translation of their interest in the charter collection and in charters, which we find directly in certain monastic texts of the eleventh century and which takes on new life. The Montier-en-Der case is very suggestive in this regard. Probably in 935, reformed monks who had come from Saint-Evre at Toul invested Montier-en-Der and drove out the *coenobitae* who were living there under the “unworthy” Abbot Benzo.⁸⁵ This event marked the birth of the new monastic community.

⁸² Hariulf makes no mention of fire in the monastery during the eleventh century.

⁸³ PLATELLE, *Le temporel*, pp. 124-125.

⁸⁴ Due to Viking attacks, the monks of Saint-Amand abandoned their monastery between 881 and 883 and took refuge for a time at Saint-Germain-des-Prés, taking only part of their archives along (see PLATELLE, *Le temporel*, pp. 59-60 et 70-72). It was probably during this period that they lost two Merovingian diplomas, replaced by forgeries in 899 at the latest (see Th. KÖLZER, *Merowingerstudien 2* (Hannover, 1999; *MGH Studien und Texte* 26), p. 85). Under Viking pressure, the monks of Montier-en-Der fled in 887-888 and settled for many years in the Viennois (see F. NEISKE, “Konvents- und Totenlisten von Montier-en-Der”, *FSr* 14 (1980), pp. 243-273, esp. p. 255), but we have no information whatsoever of the impact of their flight on the archives of Saint-Amand. As for Saint-Riquier, it was probably during the Viking attack of 881 that it was laid waste and burnt; the monks left and the Vikings carried off “*quae discentibus fratribus exsupellectili remanserant ecclesie*” (Hariulf, *Chronicon*, III, 20, p. 143); there is no reference to the archives. Later (first half of the tenth century?), clerks and monks returned to reoccupy the site (*ibid.*, III, 21, p. 149) (see J. LAPORTE, “Étude chronologique sur les listes abbatiales de Saint-Riquier”, *Revue Mabillon* 197 (1959), pp. 101-136; see also the works cited *infra*, note 89).

⁸⁵ K. HALLINGER, *Gorze-Kluny: Studien zu den monastischen Lebensformen und Gegensätzen im Hochmittelalter* (Rome, 1950), I, p. 62; N. BULST, *Untersuchungen zu den Klosterreformen Wilhelms von Dijon (962-1031)* (Bonn, 1973; *Pariser Historische Studien* 11), p. 32; NEISKE, “Konvents- und Totenlisten”, p. 244. The principal source is the *De diversis casibus* (see the fol-

However, Benzo took with him the *privilegia* of Montier-en-Der to his retreat in Montier-la-Celle, and it was only under Abbot Adso that they were recovered (in 968 at the latest); the monks immediately made use of these documents to reassert their lost rights.⁸⁶ We grasp from this example how the charter collection, and not just a given charter, had a particular affective significance as it provided the identity of the monastery, its history glorifying the very birth of the community. The memory of these facts remained alive even after a century and was deemed worthy of being upheld; they were related in a historical-hagiographic work written shortly after the death of Abbot Bruno († 1085). It is in reference to that abbot that the *De diversis casibus* again speaks of the archives. After reminding the audience of the personal relations between Bruno and Leo IX, the author proclaims the *familiaritas* which Bruno continued to enjoy with the successors of the great pope from Lorraine, namely Stephen IX, Nicholas II, Victor II, and Alexander II. The anonymous writer continues that “being concerned about the days after him, he wisely stored a large number of old privileges and many recent ones that (those popes) had corroborated with their authority of confirmation in the archives of our institution”.⁸⁷ The charter collection bears witness to the renown of the abbot, affirms the prestige of the sanctuary and defends its rights. Since the care of charters signifies respect for tradition and foresight, a good abbot must take care of them. Somewhat like relics with which they share a number of similarities,⁸⁸ the archives were a “capital” to be protected, maintained and accumulated.

Charters must be protected because they protect. The (recurrent) reforms, that our three institutions underwent during the tenth century and even later probably sharpened this conception of the charter collection as bringing together the functions of guardian and identity.⁸⁹ Hariulf reports the efforts made

lowing note).

⁸⁶ *Liber secundus de diversis casibus Dervensis coenobii et miraculis s. Bercharii*, ed. J. MABILLON, *Acta sanctorum ordinis sancti Benedicti* 2 (Paris, 1669), pp. 844-861, cc. 9 and 11, pp. 848-849; on this passage and the problems it raises, see MORELLE, “Des moines”, part 3.2.

⁸⁷ *Liber secundus*, c. 12, p. 850: “*Usus quoque sibi decenti familiaritate successorum supra denominati s. pape Leonis, scilicet Stephani, Nicolai, Victoris atque Alexandri; plurima prisca privilegia, multaque moderna eorum auctoritatis confirmatione roborata, sollicitus post se venturae aetatis istius loci prudens recondidit archivis*”.

⁸⁸ I shall return to these similarities elsewhere.

⁸⁹ Montier-en-Der was reformed in 935 (see *supra*, note 85). Saint-Amand was reformed by Gerard of Brogne in 952 (see *supra*, note 21); as for Saint-Riquier, the indications (provided by Hariulf) are very small for an attempt by Gerard, which is nonetheless placed about 949-951. In all three cases, the reform was short-lived or had little effect. At Saint-Riquier, normality returned about 980 with Engelard, a monk from Corbie appointed to Saint-Riquier with the support of the *Dux Francorum*, Hugues Capet; at Saint-Amand, the control of the Count of Flanders (or of the

by Abbots Engelard and in particular Enguerrand to reaffirm in writing the rights of a monastery in the face of the usurpations of the laity. However, it was at Saint-Amand that written documents were used more as the weapons of the monks, the charter collection its arsenal that had to be filled with ammunition. Without written documents the community feels vulnerable and disarmed, a sentiment that is expressed in the preamble of a charter of donation for example: "Nowadays it has become very common to commit for posterity by means of parchment and ink every gift of property made to those who serve God in the church. It is the strongest rampart against the cruel lances of madmen and their bloodthirsty cries, to keep the folly of pseudo-Christians from plundering what true Christians have given to God for their redemption".⁹⁰ When we read this text, which is reiterated by others, we understand that written instrumentation is no longer believed to be an obligation to the general rights and norms, but the reflex of a community which, living in a hostile environment, puts up ramparts against the assaults of evil men, because it puts more trust in its own forces than in those of external authorities.⁹¹ If the idea of the "rampart" inherent in the term *munimentum* is not new, the favour it is accorded at the time should be pointed out. In brief, if the monks were more careful to conserve charters it was perhaps because they believed in them and trusted them more.

This may be why there was a new dynamism in recording, in the "*Verschriftung*" of legal actions. At Saint-Amand the preamble we referred to above⁹² speaks of the written record of gifts as a rather new *mos* which is being

king, under Lothaire) over the abbey continued until the arrival of Richard of Saint-Vanne (1013). On Saint-Riquier, see J. LAPORTE, "Gérard de Brogne à Saint-Wandrille et à Saint-Riquier", *Revue bénédictine* 70 (1960), pp. 142-166, esp. pp. 157-159 (to be used with caution); for Saint-Amand, see H. PLATELLE, "L'œuvre de Saint-Gérard de Brogne à Saint-Amand", *ibid.*, pp. 127-141; see on both of these A. DIERKENS, *Abbayes et chapitres entre Sambre et Meuse (VI^e-XI^e siècles)* (Sigmaringen, 1985: *Beihefte der Francia* 14), pp. 239-241.

⁹⁰ Charter by which Helger and his wife Bertha gave various properties at Flines to Saint-Amand ((1062), ed. DUVIVIER, *Actes*, 1, pp. 40-42): "*Unde hodieque mos increbuit ut quicquid alodii Deo in ecclesia deservientibus traditur, posteris per cartam et atramentum debeat mandari: quatinus contra seva jacula debaccantium sive linguas latrantium firmissimi sit causa obstaculi, ne quod veri christicole Deo contulerunt pro redemptione sui, insanientes pseudochristiani sinantur depredari*". These are the donors and not the monks speaking, but the transfer leaves no doubt; the expression "*per cartam et atramentum*" ("by parchment and ink") is a "fetish" formula of the writers of Saint-Amand (see the text cited *supra*, in note 48; cf. PLATELLE, *Le temporel*, p. 122).

⁹¹ We note, however, that the protection afforded by the record extends to the "good" lay people, donors and protectors of the abbey. Here again the role of the record in the relations between the monks and lay people deserves much more attention, which is not possible in the scope of this article.

⁹² See *supra*, note 90.

used more frequently. It seems to denounce implicitly the lack of foresight of men of the past. Another charter, a contemporary one to the preceding and close to the preamble in inspiration, suggests that the gifts it is going to list, and which had been made earlier, had not been written down until now.⁹³ But what is the validity of the first declaration if we know the second one to be pertinently false, as we have seen above?⁹⁴ It would be foolhardy to draw conclusions from this concerning the evolution of the use of records. Nonetheless, such comments are not insignificant. They bear witness to a clear desire to govern by written, authentic documents. When Malbod repeated the earlier gifts which had already been set forth in writing in a new document issued in his name, he was offering the gifts of the faithful a second protection in writing, that of his authority. Written documents became more common and (re)conquered the abbey mentality.

If we look at the three charter collections, we notice that each one of them devoted a considerable part to abbatial charters starting in the first decades of the eleventh century. Their increase accompanied that of documents in general and absorbed their successes. This was the preferred form for documenting legal actions resulting from seigniorial emancipation. At Saint-Amand it was the abbatial charter that fixed the rights of a local *advocatus*, established the transmission of the position of lay provost, on two occasions recorded the *tortitudines* that one of its holders had renounced, or related the saga of legal and religious procedures taken against a local seigneur.⁹⁵ Most of the documents describe court sessions and assemblies; they are texts which frequently have a developed narrative and are fully equal to those we find in the Loire Valley.⁹⁶ The five abbatial charters of Saint-Riquier that Hariulf inserted into his chronicle are different altogether. Two of them are simple usufruct concessions of monastery property.⁹⁷ The purpose of the other three was to resolve serious conflicts with lay people. We find the lifetime use of a mill offered to a knight who renounced his claim on it; the surrender notification of a *villa* which someone had seized, and the abandonment of a property claim against Saint-Riquier

⁹³ See *supra*, note 48.

⁹⁴ See *supra*, the development relevant to notes 48-50.

⁹⁵ See *supra*, notes 24-26 and 29.

⁹⁶ See D. BARTHÉLEMY, "Une crise de l'écrit? Observations sur des actes de Saint-Aubin d'Angers (XI^e siècle)", *BEC* 155 (1997), pp. 95-117 (reprinted in a revised form in ID., *La mutation de l'an mil a-t-elle eu lieu ? Servage et chevalerie dans la France des X^e et XI^e siècles* (Paris, 1997), pp. 29-56); ID., *La Société dans le comté de Vendôme, de l'an mil au XIV^e siècle* (Paris, 1993), first chapter, "Les mutations documentaires", pp. 19-127.

⁹⁷ Hariulf, *Chronicon*, III, 31, pp. 174-175 (Engelard (1007), concerning a property situated in the diocese of Liege); IV, 21, pp. 233-234 (Gervin (1046)).

in return for a financial settlement.⁹⁸ These charters are extremely concise and carefully constructed; they do not have a preamble but include a corroboration, a date and subscriptions (“by our brothers and our faithful followers”). They have nothing of the inflated and hybrid forms that we find in the documents of Saint-Amand.⁹⁹ As for the extensive corpus of abbatial charters (56) from Montier-en-Der, we will limit ourselves to a few brief comments. The unadorned abbatial charters concern many gifts which sometimes accompanied the entry into monastic *societas* or taking the habit, or the promise of burial in church soil. But more generally, they provide support for greatly varied *conventions*. There is an imposing mass (more than 20 documents) of *mainfermes* and other lifetime contracts extended to the laity (sometimes to settle disputes).¹⁰⁰ Then there is the whole line of documents on the office of *advocatus* and other seigniorial customs. We also see abbatial charters used to settle contested gifts and to act upon promised reparations from turbulent knights. Charters between ecclesiastical partners, however, are very rare and late; the ones we do find concern primarily the division of parish revenues. The abbatial charter was a privileged support to relations with lay partners of limited or moderate importance; its flexibility reflects the adaptation of monastic writings to the new socio-political conditions. It also symbolizes the monks’ taking charge of their identity as far as charters are concerned.

Other documentary categories than abbatial charters also contributed to the renewal of charter collections. We mention here episcopal charters which concerned primarily the statutes of parish churches acquired by the monks. They are not very significant at Saint-Riquier,¹⁰¹ they are late at Saint-Amand,¹⁰² somewhat earlier at Montier-en-Der, but there we see them really take off, just

⁹⁸ Hariulf, *Chronicon*, IV, 7, pp. 193-194 (Enguerrand (1043)); IV, 21, pp. 232-233 (Gervin (1053)); IV, 22, p. 235 (Gervin (1062-1063)).

⁹⁹ The distinction we see here between two types of documents recalls the bipolarity of the production in the Loire valley demonstrated by D. BARTHÉLEMY, “Une crise de l’écrit ?”, pp. 100-101, between “performance documents” and “memorial writings”. Nonetheless, we must keep in mind that in the distinction, the formal differentiation takes precedence over that concerning tenor.

¹⁰⁰ See on these documents L. MORELLE, “Les ‘actes de précaire’, instruments de transferts patrimoniaux (France du nord et de l’est, VIII^e-XI^e siècle)”, *Mélanges de l’École française de Rome, Moyen Age* 111 (1999), pp. 607-647.

¹⁰¹ 9 episcopal documents, the oldest of which is a letter from the Archbishop of Reims, Arnulf (989-1021); 4 documents, the last from 1022, concerning the pledging of property in the Liège area to the monastery of the Bishop of Liège; 4 documents after 1045 concern altars or churches (see the 1098 inventory (Hariulf, *Chronicon*, pp. 317-318)).

¹⁰² 7 charters, 6 of which date from after 1085.

as in Saint-Amand, only in the beginning of the twelfth century.¹⁰³ Documents concerning relations with the papacy depended on the internal history of the establishment. We find two old documents at Saint-Riquier,¹⁰⁴ three late confirmations at Saint-Amand; Montier-en-Der leads with 18 documents, 12 of which for the period that Bruno (1050-1085), a protege of Pope Leo IX, was abbot.¹⁰⁵ Charters with lay authorities again reflect the local situation. Saint-Riquier received five charters from the Counts of Ponthieu, who were the *advocatus* of the monastery.¹⁰⁶ The authority of the Count of Flanders for Saint-Amand which was very strong as of the tenth century is not found in charter evidence until very late.¹⁰⁷ Montier-en-Der, however, which came in the orbit of the Counts of Troyes and Perthois, originating from the Vermandois lineage, at the end of the tenth century received a few charters from them, as well as from the rulers of Brienne.¹⁰⁸ These few facts, which deserve further development, suffice to demonstrate the typological renewal of charter material in the three charter collections.

It is possible that this renewal had repercussions on the conservation of writings. However, we are a long way from the period in which one could, like Abbo of Fleury in his collection of canons, adopt the standard of the ecclesiastical charter collection by placing the *privilegia* (from kings and popes) on one side and *testamenta* which he separated simply into *dotes*, gifts and *precariae* on the other.¹⁰⁹ The new writings confuse nomenclature, and the hierarchy of

¹⁰³ 22 documents, 11 of which date from after 1097.

¹⁰⁴ (Forged?) letters of Pope John (XV) (985-988), *JL* 3861 and 3862; ed. H. ZIMMERMANN, *Papsturkunden 896-1046*, 1 (Vienna, 1984: *Österreichische Akademie der Wissenschaften, phil.-hist. Klasse, Denkschriften* 174), Nos. †285 and †286.

¹⁰⁵ On the relations of Bruno with the papacy, see NEISKE, "Konvents- und Totenlisten", pp. 257-259; L. FALKENSTEIN, "Montier-en-Der et les pontifes romains aux XI^e et XII^e siècles", to be published in the proceedings of the colloquium "Moines du Der"; L. MORELLE, "Le concile de Reims de 1049 et le statut de l'abbaye de Montier-en-Der", to be published in the journal *Fran-cia*.

¹⁰⁶ See *supra*, note 59. The charters date from between 1026-1027 and 1053-1075 (*Recueil des actes des comtes de Ponthieu (1026-1279)*, ed. C. BRUNEL (Paris, 1930: *Collection de documents inédits sur l'Histoire de France*), Nos. 1-5, pp. 1-7). In these charters, the counts also act as authors of the principal legal act (gift, restitution); these are not confirmations of acts carried out by others.

¹⁰⁷ See figure 1 on p. 178. The first charter of a count (Gautier 33) stems from Robert II (1087-1111) and dates from 1111.

¹⁰⁸ See figure 2 on pp. 192-193. The first charters, stemming from Herbert the Elder, date from 968 and 980. On the relations between the monastery and the counts of Champagne, see M. BUR, *La formation du comté de Champagne v. 950-v. 1150* (Nancy, 1977: *Mémoires des Annales de l'Est* 54), index s.v. "Montier-en-Der", esp. pp. 352-353; see also MORELLE, "Le concile de Reims".

¹⁰⁹ Abbo of Fleury, *Collectio canonum*, ed. J.-P. MIGNE, *Patrologiae latinae ... cursus comple-*

writings is levelled. The charters of the Capetians are no longer seen as precepts and do not emerge from the bulk of production. The era of Carolingian *pancartes* is past, whereas general confirmations from Rome begin to appear only timidly at the end of the period.¹¹⁰ As if embarrassed by the burgeoning of stored writings, the inventory of the charter collection of Saint-Riquier multiplies precise descriptions for some time before returning wisely to a few generic descriptions which are dominated by the term *testamentum*.¹¹¹ Victims of their burgeoning, charters seem to lose some of their individual value; the charter collection, their repository, finds itself upgraded in value.

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In our search for charter material conserved during the eleventh century, we have seen how the “mediators”—cartularies, “embedded” chronicles, inventories—all reveal (with varying precision) and distort the production we are looking for. These distortions vary, as we have said before, from source to source, and it is possible to a certain extent to discern an (unexpressed) logic and its influence on the material. When the “mediators” are most in evidence, as is the case at Saint-Riquier (1098) and Montier-en-Der (about 1127), the charter collections have an uneven amount of writings produced and stored in the course of the eleventh century, three to four times as much for this century than for earlier centuries. This does not seem to be an artificial result of our research instruments which might be believed to expand the material that is closer to their own production. It is not the cartulary that produces an image of abundance, it is the accumulation of writings that stimulates “cartularization”.

What does this abundance mean? Is it increased production or better conservation? Any quantitative analysis seems unjustified, if only because the

tus, 221 vols. (Paris, 1841-1864), 139, col. 480; on the work (994-996), see M. MOSTERT, *The Political Theology of Abbo of Fleury: A Study of the Ideas about Society and Law of the Tenth-Century Monastic Reform Movement* (Hilversum, 1987: *Medieval Studies and Sources* 2), pp. 52-54.

¹¹⁰ Saint-Amand. On the great increase of descriptions of property in the pontifical privileges to northern French churches, see D. LOHRMANN, *Kirchengut im nördlichen Frankreich: Besitz, Verfassung und Wirtschaft im Spiegel der Papstprivilegien des 11.-12. Jahrhunderts* (Bonn, 1983: *Pariser historische Studien* 20), first part (pp. 51-114).

¹¹¹ See above p. 187. On medieval terminology used in charters, see O. GUYOTJEANNIN, “Le vocabulaire de la diplomatie en latin médiéval (noms de l’acte, mise par écrit, tradition, critique, conservation)”, in: *Vocabulaire du livre et de l’écriture au moyen âge*, ed. O. WEIJERS (Turnhout, 1987: *CIVICIMA: Études sur le vocabulaire intellectuel du moyen âge* 2), pp. 120-134, esp. pp. 121-126.

production of earlier centuries is undoubtedly too misrepresented to allow a comparison. On the other hand, it is clear that new legal processes are recorded and it is probable that “traditional” actions are recorded more. If recording appears to play a larger role, it is because written documents themselves seem to be more important. This is translated, albeit in different ways according to the local context, by better preservation of accumulated writings. More was being written, and it was being better conserved.

The abbatial charter was of almost no interest to the cartularist of Saint-Amand and to the chronicler of Saint-Riquier; it was to become, however, a fundamental element of typological renewal in the charter collections of the eleventh century. In some cases it was commemorative and discursive (Saint-Amand), in others concise and restricted to probatory elements (Montier-en-Der, Saint-Riquier). Its flexibility made it a privileged instrument of the new dynamism in writing, characterized by the profusion, the explosion and the recomposition of old forms which would become residual after this point.

The abbatial charter also testifies to a new (or renewed) relationship between literate monastic communities and archives. The monastic charter collection not only changed its ingredients, the image and position of the charter collection in the identity of monastic communities changed. A rapidly evolving environment led the monks to rethink their dealings with local and regional powers, to redefine their statute and their functions, to defend their rights, to organize their responses. This recomposition was effected by writing charters which established rights, uniting past and present and preparing the future. These writings were favourites of the monks who decided more than ever to become specialists in them. The charter collections function at the same time as treasuries, arsenals and memorials. They express the identity of the establishments keeping them. In the eleventh century we see, in a certain sense, the birth of the *archivum*.

In this metamorphosis of charters and charter collection, the reform, or rather reforms that affected the monasteries we have examined seemed to have been significant factors. The importance of the local situation which was particularly influential in this domain makes any extrapolation delicate, whether this has to do with the chronology of evolutions, behaviour or solutions both on the level of the archive and of charter writing.

Between *Memoria*, Historiography and Pragmatic Literacy: The *Liber Delegacionum* of Reichersberg

ALEXANDER HECHT

Discussing *Traditionsbücher* (*Codices traditionum*) always means discussing written sources that were in use for hundreds of years. In the written tradition of high medieval Bavaria, these played an especially important role, and a considerable amount of research has been devoted to them in the past century.¹

In 1911, Oswald Redlich already pointed out that the aspects of liturgical and historiographical *memoria* should not be forgotten as motives in the composition of collections of notitiae.² More recently, Peter Johanek³ and Patrick Geary⁴ showed with their research that the purpose of *Traditionsbücher* was not a one-dimensional, purely administrative one.

In the following, I will attempt to explain why this is also true for the *Codex traditionum* of Reichersberg, known as the *Liber delegacionum*.⁵ The Rei-

¹ Cf. the list in J. WIDEMANN, "Die Traditionen der bayerischen Klöster", *Zeitschrift für bayerische Landesgeschichte* 1 (1928), pp. 225-243.

² O. REDLICH, *Die Privaturkunden des Mittelalters: Urkundenlehre III. Teil* (Munich and Berlin, 1911: *Handbuch der mittelalterlichen und neueren Geschichte, Abteilung IV: Hilfswissenschaften und Altertümer*), p. 87.

³ P. JOHANEK, "Zur rechtlichen Funktion von Traditionsnotiz, Traditionsbuch und früher Siegelurkunde", in: *Recht und Schrift im Mittelalter*, ed. P. CLASSEN (Sigmaringen, 1977: *Vorträge und Forschungen* 23), pp. 131-162.

⁴ P.J. GEARY, *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millennium* (Princeton, 1994).

⁵ The manuscript is still in the archives of Reichersberg: Stiftsarchiv Reichersberg No. 55.

chersberg monastery was founded between 1080 and 1084 by the nobleman Werner of Reichersberg, whose wife Dietbirg was the sister of Archbishop Gebhard I. After the early death of his son, Werner decided to transform his castle on the shore of the river Inn into a monastery, and he himself joined the community of Augustinian canons. Given the family background, it is no wonder that Reichersberg had very strong ties with Salzburg, even though it actually was part of the diocese of Passau.⁶

The *Liber delegacionum* was started under provost Gerhoch, undoubtedly the best-known man at the top of the convent,⁷ in the years between 1146 and 1169. Until the end of the thirteenth century, the manuscript was kept and updated: over 270 entries were made. First I would like to take a closer look at the seven copies of charters at the beginning of the *Traditionsbuch*. Unlike other examples, these copies all deal with the situation of Reichersberg in the middle of the twelfth century without giving any information about the foundation of the monastery. The first text copied into the *Liber delegacionum* was a charter of pope Eugenius III dating from May 4th, 1146.⁸ Eugenius took Reichersberg under his protection and pointed out the special situation of the monastery that belonged to Passau but which was actually always orientated towards Salzburg. Detailed information about the properties of Reichersberg is also given in the charter.

The next copy was made from a charter of archbishop Konrad I of Salzburg, dated 1137,⁹ in which Konrad confirmed the donation of land and *curtes* to the monastery. What follows is the text of a royal charter of King Konrad III dating from December 15th, 1142.¹⁰ The king granted Reichersberg the right to accept donations from Bavarian *ministeriales* and from *ministeriales ad regnum Teutonicum pertinentes*. It is the earliest known permission of this kind.¹¹

This shows that the charters of the three most important authorities for Reichersberg—the pope, the archbishop and the king—were put at the beginning

⁶ Concerning the history of the monastery, cf. the contributions in: *900 Jahre Augustiner Chorherrenstift Reichersberg* (Linz, 1983).

⁷ Cf. P. CLASSEN, *Gerhoch von Reichersberg: Eine Biographie: Mit einem Anhang über die Quellen, ihre handschriftliche Überlieferung und ihre Chronologie* (Wiesbaden, 1960).

⁸ *JL* No. 8914.

⁹ *Salzburger Urkundenbuch, II. Band: Urkunden 799-1199*, ed. W. HAUTHALER and F. MARTIN (Salzburg, 1916), No. 176.

¹⁰ *MGH D Ko III*, No. 81, pp. 143-144.

¹¹ Th. ZOTZ, "Milites Christi: Ministerialität als Träger der Kanonikerreform", in: *Reformidee und Reformpolitik im spätsalisch-frühstaufischen Reich: Vorträge der Tagung der Gesellschaft für mittelhheinische Kirchengeschichte vom 11. bis 13. September 1991 in Trier*, ed. S. WEINFURTER (Mainz, 1992: *Quellen und Abhandlungen zur mittelhheinischen Kirchengeschichte* 68), pp. 301-328, esp. p. 323.

of the *Liber delegacionum*, demonstrating the support the monastery enjoyed in the decade following 1140. This is valid even if the fact is taken into account that the text of four other charters was subsequently copied into the spare room on the first folia and on an added folio of the codex.¹² Again, these were papal and archiepiscopal charters.¹³ From the text copied on f. 1r—a charter of pope Lucius II from 1144—we see that the pope ordered the bishop of Passau to stop all assaults on Reichersberg being done by clerics of his diocese. Bishop Reginbert was held personally responsible for the enforcement of the papal order. Once again the monastery's independence from the diocese of Passau was underlined by the pope. Why then was it so important to demonstrate the backing the monastery enjoyed from various authorities at the time the manuscript was started?

The years of Gerhoch's rule were in fact marked by a long quarrel with the relatives of Werner of Reichersberg, who did not approve of his donations to the new community. In particular, the conflict focused on properties near Reichersberg, called Münsteuer.¹⁴ Even the emperor concerned himself with the quarrel, and in 1166 one of the descendants of Werner, Heinrich of Baumgarten, devastated the monastery and its properties. It was not until in 1176, long after Gerhoch's death, that the conflict came to an end: The monastery was declared to be the definite owner of Münsteuer.

It will be clear that a dispute of this type was not only an important but also very threatening event in the monastery's history, and indeed we find a detailed commentary on it in the *Liber delegacionum*.¹⁵ The text was renewed and updated several times during the controversy; folia were added and, of course, the community's own point of view and position are expressed in the lines of the commentary. Once again the question is: Why was this information written into the *Liber delegacionum*? Especially when it is unlikely that the manuscript was used as a legal instrument. There is no evidence that it played an "active" role in the quarrel concerning the properties at Münsteuer. Patrick Geary stated in his book *Phantoms of Remembrance*: "As legal instruments for the defence of property rights, originals had some claim throughout much of Europe; copies, before the creation of public notaries and the means of authentication associ-

¹² f. 4/7 was added.

¹³ Pope Lucius II (15 April 1144, *JL* No. 8576); Archbishop Konrad I (23 October 1144, *Salzburger Urkundenbuch* II, No. 230); Pope Innocent II (12 April 1139-1141, *JL* No. 8119 and 8 January 1142, *JL* No. 8195).

¹⁴ Cf. P. CLASSEN, "Der Prozeß um Münsteuer (1154-76) und die Regalienlehre Gerhochs von Reichersberg", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 77 (1960), pp. 324-345.

¹⁵ Nos. 122-123, pp. 337-350.

ated with *pancartae* confirmations, had none".¹⁶ As indicated earlier, the Münsteuer controversy was an important period in the monastery's history, which is why I would suggest that the members of the community, and above all provost Gerhoch, wanted to offer future generations the possibility of reading about and remembering this chapter in the institution's history. This means that historiographical intentions led to the entry into the *Traditionsbuch*, another interesting aspect to think about when interpreting *codices traditionum*.

Going back to the copies of charters at the beginning of the manuscript, it is clear that these texts also have a narrative character: they tell us about Reichersberg's situation in the middle and the second half of the twelfth century. A comparable concept was used in the *Traditionsbuch* of Diessen in Bavaria.¹⁷ At the beginning of the thirteenth century a cleric named Liutold put the copies of four charters at the beginning of it with no regard to chronology, but taking into account their importance for the monastery. Three of the charters are papal ones, the other one is from archbishop Konrad I of Mainz in his capacity as *legatus papae*.¹⁸ As has already been explained, these copies could not be used as legal instruments; nevertheless their contents show developments in the history of the monasteries. In the case of Diessen, Liutold left a quire empty: perhaps a commentary on the foundation was to have been written down on these folia.

In Reichersberg the first seven entries of the *Liber delegacionum* give us no information about the beginning of the monastery founded between 1080 and 1084: a remarkable fact if historiographical intentions played a role in composing the manuscript. At the same time, however, when the *Liber delegacionum* was started, provost Gerhoch was himself beginning to write down the first version of the Reichersberg annals,¹⁹ where the entry to the year 1080 is a *historia foundationis*. In a newer version of the annals, composed around 1167,²⁰ this narration about the foundation was extended and put to the year 1084. Both projects—the composition of annals and the *Traditionsbuch*—were started under

¹⁶ GEARY, *Phantoms*, p. 83.

¹⁷ M. BORGOLTE, "Stiftergedenken in Kloster Diessen: Ein Beitrag zur Kritik bayerischer Traditionsbücher: Mit einem Textanhang: Die Anlage der ältesten Dießener Necrologien", *FSt* 24 (1990), pp. 235-289. *Die Traditionen und Urkunden des Stiftes Dießen 1141-1362*, ed. W. SCHLÖGL (Munich, 1967: *Quellen und Erörterungen zur bayerischen Geschichte*, N.F. 22.1).

¹⁸ BORGOLTE, "Stiftergedenken", p. 245, note 55.

¹⁹ *MGH SS* 17, pp. 443 ff. (left column) and F.-J. SCHMALE, "Die österreichische Annalistik im 12. Jahrhundert", *DA* 31 (1975), pp. 144-203, esp. pp. 195 ff.

²⁰ *MGH SS* 17, pp. 443 ff. (right column) and SCHMALE, "Die österreichische Annalistik", p. 196.

the same provost and thus can perhaps be viewed as a unity. In that case it would have been senseless to repeat the same information in both manuscripts.

The eighteenth century editors of the *Monumenta Boica* could not accept this situation when they were preparing the first edition of the Reichersberg manuscript. For them a *codex traditionum* had to be introduced by remarks on the foundation. That is why the edition starts with what is called a *historia foundationis*, leaving the first seven copies of charters completely out.²¹ This text is a compilation of two extracts from the newer version of the annals; one of the extracts is the commentary on the monastery's foundation already referred to. This compilation might date back in the fifteenth century,²² but there is no evidence that it was ever copied into the *Traditionsbuch*. In the edition of the Reichersberg annals published in 1861, the editor Wilhelm Wattenbach reiterated that the *Liber delegacionum* was introduced by this *historia foundationis*.²³ The story becomes even more confusing when we take the fact into account that only nine years earlier a second edition of the Reichersberg manuscript had been made in the *Urkundenbuch des Landes ob der Enns*,²⁴ correctly starting with the copies of the charters. Wattenbach obviously never consulted either the original codex of the *Liber delegacionum* or even the most recent edition.

Codices traditionum always contain a large number of names, not only of the donors, but also of witnesses. The mentioning of names in the manuscripts is the basis for liturgical *commemoratio*. Donors gave their properties to the monastery and, in exchange, the monks prayed for their *remedium animae*. On this specific aspect a significant amount of research has been performed in recent years, e.g. by Otto Gerhard Oexle, Michael Borgolte and Patrick Geary.²⁵ People were convinced that the clerics' prayers were more efficient than their own. Writing down the names in a *Traditionsbuch* also secured the memory of those mentioned in the manuscript after their death. One entry in the *Liber delegacionum*, for example, tells about the marriage between the *libera* Hiltegard and the *censualis* Ruddebertus of Viehhausen. We find the names of many children and grandchildren of Hiltegard recorded in the manuscript. None should be forgotten in times to come. *Codices traditionum* therefore had a vital function in medieval *memoria*. In this context it is important to emphasise that

²¹ *Monumenta Boica*, 3, ed. Maximilianeische Akademie der Wissenschaften (Munich, 1764).

²² K. MEINL, "Bartholomaei Hoyer, dicti Schirmer, cellerarii 1462-69, Registrum Procuracionis Rei Domesticae pro familia Reichersperg", *AÖG* 61 (1880), pp. 33-88, esp. pp. 37 ff.

²³ *MGH SS* 17, p. 449, note 35.

²⁴ *UBLOE* 1 (Vienna, 1852), pp. 277-420.

²⁵ O.G. OEXLE, "Memoria und Memorialbild", in: *Memoria—Der geschichtliche Zeugniswert des liturgischen Gedenkens* (Munich, 1984: *MMS* 48), pp. 384-440; BORGOLTE, "Stiftergedenken"; GEARY, *Phantoms*.

memoria should not be seen in an exclusively liturgical sense. Pronouncing the name of the dead made him or her present again: he or she was seen as a part of social, legal and economic relations once again.²⁶ This *memoria* aspect unites *Codices traditionum*, *Libri vitae* and *Necrologia*.

For the monasteries, recording the names of the donors was also important. Whenever the descendants tried to fight donations made to a monastery, they were threatening the *remedium animae* of their ancestors.

As we can see *Traditionsbücher* had their place in the monastery's life, uniting past and present. They offer knowledge about the monastery's history and about its properties. It is even possible that in recording the past, the entries provided guidelines for future decisions—if we believe that people do learn from history. The *codices traditionum* are therefore also part of what is called “pragmatic literacy”, a field of research that has only been explored in recent years.²⁷ The change from the production of “holy books” to bookkeeping, as Hagen Keller put it, is one of the most remarkable developments in the Middle Ages. Where then are *Traditionsbücher* situated in this evolution of writing? I am sure that on the one hand manuscripts like the *Liber delegacionum* are no longer exclusively “holy books”, but that on the other hand they do not belong solely to the written sources of bookkeeping. They belong somewhere in between, and that is why having a closer look can be so interesting.

Using the example of the *Liber delegacionum* I have attempted to explain that *Codices traditionum* are an important part of the medieval written tradition. Interpreting them is not an easy task, because various aspects played a role when these manuscripts were composed—liturgical and historiographical aspects, and to a minor extent also administrative ones. It seems unlikely to me that the Reichersberg codex was used in everyday administration of the monastery. The notitiae do not follow any topographical order, such as in the case of the early medieval *codex traditionum* of Mondsee.²⁸ Furthermore, the only index in the manuscript dates from the fifteenth century; it was written inside the cover and is nothing more than a simple enumeration of the entries; it is not a register.

Of course not all the *Traditionsbücher* can be interpreted as the *Liber delegacionum*, and not all of the aspects mentioned were equally important in every

²⁶ OEXLE, “Memoria und Memorialbild”, p. 385.

²⁷ H. KELLER, “Vom ‘heiligen Buch’ zur ‘Buchführung’: Lebensfunktionen der Schrift im Mittelalter”, *FSI* 26 (1992), pp. 1-31; ID., “Träger, Felder, Formen pragmatischer Schriftlichkeit im Mittelalter: Der neue Sonderforschungsbereich 231 an der Westfälischen-Wilhelms-Universität Münster”, *FSI* 22 (1988), pp. 388-409.

²⁸ *Das älteste Traditionsbuch des Klosters Mondsee*, ed. E. REITER and G. RATH (Linz, 1989: *Forschungen zur Geschichte Oberösterreichs* 16).

case. But in trying to understand the intentions behind the composing of a *codex traditionum*, one must always remember one thing: Handle with care!

Part IV: Using Charters

From “Improvised Theatre” to Scripted Roles: Literacy and Changes in Communication in North Italian Law Courts (Twelfth-Thirteenth Centuries)

FRANZ-JOSEF ARLINGHAUS

This paper deals with the changes of the form of communication that took place in North Italian law courts during the High Middle Ages. These changes are linked to the intensive use of writing that had been implemented since the last decades of the twelfth century in a massive way within the normal everyday activities of law courts. Many parts of the increasingly differentiated proceedings were written down and—the crucial points of this paper—oral communication in court was based increasingly upon written texts.

The strong growth in the use of writing in court—together with the reception of Roman law—is usually discussed from the perspective of an inclination towards a more rational and objective approach to legal matters. It is true that, from a contemporary point of view, the way legal proceedings were structured in the thirteenth century seemed to lead to more appropriate and “just” decisions than was the case in the sometimes ordeal-based judgements of earlier periods.¹ But, looking at penal justice and the way *heretici* were treated, some

¹ The *Liber Consuetudinum*, written in Milan in 1216, relates that with the Peace of Constance (1183) ordeals fell out of use in Northern Italy. “*Istae solemnitates olim ante pacem imperatoris Federici in usu fuerunt: pace vero facta cum Federico imperatore, qui Mediolanensibus et aliis Lombardis plenam iurisdictionem concessit, pro magna parte huiusmodi solemnitates exularunt ...*” (*Liber Consuetudinum Mediolani anni MCCXVI*, ed. E. BESTA AND G.L. BARNI, “Nuova edizione interamente rifatta” (Milan, 1949), pp. 298 ff.). For the use of writing in the Italian communes, see H. KELLER, “Vorschrift, Mitschrift, Nachschrift: Instrumente des Willens zu vernunftgemäßem Handeln und guter Regierung in den italienischen Kommunen des Duecento”, in: *Schriftlichkeit und Lebenspraxis: Erfassen, Bewahren, Verändern*, ed. H. KELLER, CH. MEIER and TH.

doubts may arise concerning whether the people of the Italian city-states aimed at creating a “rational” or “fair” trial in the modern sense of the word when they dramatically changed the way their law courts operated.²

What Is the Problem? Part I

Before going any further, it may be useful first to ask which function legal proceedings have in a given society anyhow. Firstly, for the city commune, it must have had as a priority the guarantee of the function of the society as a whole, in spite of the quarrels that may exist between certain citizens. At a time when a conflict between two individuals was almost always a conflict between two families, between two rival groups, or even between “political” parties, it was no easy task to prevent the outbreak of open fights within the city, which in turn would then hinder the function of market places or even make it difficult to pass through certain streets, etc. Secondly, it seems very difficult for a court to produce a decision which, in the eyes of both parties, is regarded as “just”, because the losing party is likely to dispute the decision, no matter what good reason might be given.³ Certainly a timeless phenomenon, it is an even greater threat to a medieval city, the structure of which was already very complex and gave rise to various conflicts not common in rural societies,⁴ and in which, on

SCHARFF (Munich, 1999: *MMS* 76), pp. 25-41.

² For the Janus-faced trials against heretics (with examples from Italy), where “rational” methods such as writing were used to produce “the truth”, see recently TH. SCHARFF, “Auf der Suche nach der ‘Wahrheit’: Zur Befragung von verdächtigen Personen durch mittelalterliche Inquisitoren”, in: *Eid und Wahrheitssuche: Studien zu rechtlichen Befragungspraktiken in Mittelalter und früher Neuzeit*, ed. ST. ESDERS and TH. SCHARFF (Frankfurt am M., 1999: *Gesellschaft, Kultur und Schrift: Mediävistische Beiträge* 7), pp. 139-162. For Italian penal justice, see A. ZORZI, “Rituali e cerimoniali penali nelle città italiane (secc. XIII-XVI)”, in: *Riti e Rituali nelle società medievali*, ed. J. CHIFFOLEAU, L. MARTINES and A. PARAVICINI BAGLIANI (Spoleto, 1994: *Centro Italiano di Studi sull'Alto Medioevo, Collectanea* 5), pp. 141-157. New insights into the penal justice system of the medieval city are offered by the recently-published volume *Die Entstehung des öffentlichen Strafrechts: Bestandsaufnahme eines europäischen Forschungsproblems*, ed. D. WILLOWEIT (Cologne, Weimar and Vienna, 1999: *Konflikt, Verbrechen und Sanktion in der Gesellschaft Alteuropas, Symposien und Synthesen* 1), especially the papers of E. COHEN (for France), H. SCHLOSSER (for Augsburg) and D. WILLOWEIT (for Würzburg).

³ For a theoretical reflection on the two problems in modern courts, see N. LUHMANN, *Legitimation durch Verfahren* (Frankfurt am M., 1993), pp. 69 ff. and 113 ff.

⁴ It is sufficient to consider the numerous quarrels which arose because certain buildings were erected in places where, in the eyes of the neighbours, they ought not to have been built. In March 1221, Jacobus Menclotius sued Otto Longus to tear down a wooden fence, which was built behind the wall surrounding Jacobus' property, but still on his ground. The monastery of St. Radeconda in Milan took Bellottus de Dexio to court to make him close two “windows”, which he had put

the other hand, the point of reference was not the individual but the social context of the single person, and hence any litigation was seen as a quarrel between groups, as has been pointed out above.

Looking at the specific situation of the twelfth and thirteenth centuries,⁵ within Milan—as within many other cities in northern and central Italy—we see an almost constant growth of conflicts between different social and political groups, mainly between what are referred to as the *nobiles* and the *popolo*, the latter divided into the “party” of the *Credenza di S. Ambrogio* (mainly craftsman) and the *Motta* (dominated by merchants). After the Peace of Constance in 1183, the pressure from outside lessened for several decades, and it seems that now the city societies of northern Italy allowed themselves the breakout of sometimes open conflicts which could even lead to the expulsion of large groups of the population belonging to the “wrong” party.⁶ What is more, the freedom gained at that time—some scholars speak of the Peace of Constance as the *Magna Carta* of the city communes—made the city community more responsible for their own affairs and hence limited the possibilities of referring to the emperor as a legitimation device, especially with reference to the juridical administration of the town.⁷ The war against Frederick II did not ease this situa-

in the wall that bordered the cloister (“*stoparet seu clauderet de muro fenestras duas que sunt in quodam muro*”) (ACM Nos. 339 and 312). For a relatively small town like Perugia, about 560 law cases were registered for the year 1258 alone (M. VALLERANI, “Modelli processuali e riti sociali nelle città comunali”, in: *Riti e Rituali*, pp. 115-140); VALLERANI found out that about 25% of the population of a city had contacts with the courts in one way or another (ID., *Il sistema giudiziario del comune di Perugia: Conflitti, reati e processi nella seconda metà del XIII secolo* (Perugia, 1991: *Deputazione di storia Patria per l’Umbria, Appendice al Bollettino* 14), p. 18).

⁵ For the history of Milan in the twelfth and thirteenth centuries, see H. KELLER, “Gli inizi del comune in Lombardia: limiti della documentazione e metodi di ricerca”, in: *L’evoluzione delle città italiane nell’XI secolo*, ed. R. BORDONE and J. JARNUT (Bologna, 1988: *Annali dell’istituto storico italo-germanico* 25), pp. 45-70, at pp. 48 ff.; G. ROSSETTI, “Le istituzioni comunali a Milano nel XII secolo”, in: *Atti dell’11° congresso internazionale di studi sull’alto medioevo: Milano e il suo territorio in età comunale (XI-XII secolo)*, Milano, 26-30 ottobre 1987 (Spoleto, 1989), pp. 83-112, pp. 90 ff.; G.L. BARNI, “Milano verso l’egemonia”, in: *Storia di Milano*, 3.2 (Milan, 1954), pp. 239-393; F. FRANCESCHINI, “La vita sociale e politica nel duecento”, in: *Storia di Milano*, 4.2 (Milan, 1954), pp. 155 and 392; R. HERMES, *Totius Libertatis Patrona. Die Kommune Mailand in Reich und Region während der ersten Hälfte des 13. Jahrhunderts* (Frankfurt am M., 1999: *Europäische Hochschulschriften*, Reihe 3, *Geschichte und Hilfswissenschaften* 858), pp. 423 ff. For a general survey, see PH. JONES, *The Italian City-State: From Commune to Signoria* (Oxford, 1997), pp. 130 ff.

⁶ F. MENANT, “La transformation des institutions et de la vie politique milanaïses au dernier âge consulaire (1186-1216)”, in: *Atti dell’11° congresso internazionale di studi sull’alto medioevo*, pp. 113-144. Although the survey of literature and sources in HERMES, *Totius Libertatis Patrona*, pp. 423 ff., is excellent, I cannot follow his interpretation.

⁷ A. HAVERKAMP, “Der Konstanzer Friede zwischen Kaiser und Lombardenbund (1183)”, in:

tion. When the party of the *popolo* dominated Milan in the 1250s, inner peace was still not guaranteed and the first "strong men" like Martinus della Torre tried to govern the city by their own will.⁸ But it was not until the late thirteenth and early fourteenth centuries, when the Visconti successfully established themselves as *signore* of the city of Milan, that internal conflicts lessened.⁹

What Is the Problem? Part II

If we assume that, due to the density of population and because of the complexity of social relations, conflicts are more likely to arise in a big city such as Milan than in less-populated rural areas, then the described historical situation of Milan in the thirteenth century only served to aggravate the problem. How must legal proceedings in such a city and time be structured to achieve the above goals? One successful strategy may consist of creating an autonomous

Kommunale Bündnisse Oberitaliens und Oberdeutschlands im Vergleich, ed. H. MAURER (Sigmaringen, 1987: *Vorträge und Forschungen* 33), pp. 11-44, at p. 42. Fundamental for the relationship between Barbarossa and Milan is still G. FASOLI, "Friedrich Barbarossa und die lombardischen Städte", in: *Friedrich Barbarossa*, ed. G. WOLF (Darmstadt, 1975: *Wege der Forschung* 390), pp. 149-183. A link between the Peace of Constance and the development of communal statutes in Milan is perceived by H. KELLER, "Die Kodifizierung des Mailänder Gewohnheitsrechts von 1216 in ihrem gesellschaftlichen-institutionellen Kontext", in: *Atti dell'11° congresso internazionale di studi sull'alto medioevo*, pp. 145-171. On connections between the growth of the city administration and the agreement of 1183, see F. MENANT, "La transformation des institutions", pp. 113 ff.; M.F. BARONI, "La registrazione negli uffici del Comune di Milano nel sec. XIII", *Studi di storia medioevale e diplomatica* 1 (1976), pp. 51-68; and ID., "Il notaio milanese e la redazione del documento comunale tra il 1150 e il 1250", in: *Felix olim Lombardia: Studi di storia padana dedicati dagli allievi a Giuseppe Martini* (Milan, 1978), pp. 5-25.

⁸ H. KELLER, "Mailand zur Zeit des Kampfes gegen Kaiser Friedrich II.", in: *Europas Städte zwischen Zwang und Freiheit: Die europäische Stadt um die Mitte des 13. Jahrhunderts*, ed. W. HARTMANN (Regensburg, 1995: *Schriftenreihe der Europa-Kolloquien im Alten Reichstag*, "Sonderband"), pp. 273-296; G. FASOLI, "Federico II e la Lega Lombarda: Linie di ricerca", *Annali dell'istituto storico italo-germanico di Trento* 2 (1976), pp. 39-74; E. VOLTMER, "Formen und Möglichkeiten städtischer Bündnispolitik in Oberitalien nach dem Konstanzer Frieden: Der sogenannte Zweite Lombardenbund", in: *Kommunale Bündnisse*, pp. 97-116.

⁹ E. SESTAN, "Die Anfänge der städtischen Signorien: Ein erschöpfend behandeltes historisches Problem?", in: *Altständisches Bürgertum I: Herrschaft und Gemeinverfassung*, ed. H. STOOB (Darmstadt, 1978: *Wege der Forschung* 352), pp. 346-379 (first published in Italian as: "Le origini delle signorie cittadine: un problema storico esaurito?", *Bullettino dell'istituto storico italiano per il Medio Evo e Archivio Muratoriano* 73 (1961), pp. 41-69); JONES, *The Italian City-State*, p. 9. For changes in the juridical administration, see M. SPINELLI, "Il capitano di giustizia durante la prima metà del Quattrocento: Spunti e riflessioni", in: *L'età dei Visconti: Il dominio di Milano fra XIII e XV secolo*, ed. L. CHIAPPA MAURI, L. DE ANGELIS CAPPABIANCA and P. MAINONI (Milan, 1993: *Gli Studi* 2), pp. 27-34.

"area of communication" within the city commune, in which the controversies can be treated separately from other areas of communication.¹⁰ Dealing with conflicts within an independent frame offers the possibility of them having fewer negative implications on the city commune as a whole. It also makes it easier for the *familiars* of the judges, advocates and especially the litigant parties and their witnesses to, as it were, visit the same market and attend public meetings without the risk of perpetuating the conflict there, because now everybody knows that the quarrel is being dealt with elsewhere. The damage caused by a collective manner of regulating conflicts, which draws the entire circle of kindred and friends into it, is shown by Vallerani's analysis of the *vendetta* in thirteenth-century Perugia. The large numbers of persons involved in the conflicts seriously threatened the functioning of the town's institutions.¹¹ A way of regulating conflicts collectively also before official courts seems to have been dominant in Italy until the middle of the twelfth century.¹² In this respect dissociating the settlements of conflicts from their entanglement in society is something new.

If the proceedings themselves have become an autonomous modus of social interaction, and if the individual in these proceedings is successfully detached from his social context, the chances increase that, in the case of a defeat in court, this person would have greater difficulty mobilizing his social relations

¹⁰ This is not to be confused with the "separation of powers"; in fact, what is understood here by "autonomous area of communication" goes beyond an institutional separation and includes the way people act and communicate in court. See LUHMANN, *Legitimation durch Verfahren*, pp. 72 ff.

¹¹ M. VALLERANI, *Il sistema giudiziario del comune di Perugia*, p. x, note 10.

¹² The analysis of the functioning of Italian tribunals from 1000 until 1150, recently published by Chris Wickham, shows that conflict regulation in the form of *placita* were "large scale public ceremonial(s)". This seems to be true not only for the *placita*, but also for the more "inofficial" ways of dealing with conflicts at that time (CH. WICKHAM, "Justice in the Kingdom of Italy in the eleventh century", in: *La giustizia nell' alto medioevo (secoli IX-XI)* (Spoleto, 1997: *Atti della XLIV settimana di studio del Centro Italiano di Studi sull' Alto Medioevo, 11-17 aprile 1996*), pp. 179-250, at pp. 237 ff.; quotation from p. 193). For the difference between the *placita* and the consular tribunals, which are seen as "direct representations of increasingly-formalized local power", see *ibid.*, pp. 244 ff., at p. 246. For the *placita*, see also F. BOUGARD, "'*Falsum falsorum iudicum consilium*': L'écrit et la justice en Italie centro-septentrionale au XI^e siècle, *BEC* 155.1 (1997), pp. 299-314. The different types of conflict regulation in (the rather more rural) France of the time seem to have in common that "*tous ces rites sont publics*" (P.J. GEARY, "Vivre en conflit dans une France sans état: Typologie des mécanismes de règlement des conflits (1050-1200)", *Annales Economies Sociétés Civilisations* 41 (1986), pp. 1107-1133, at p. 1119); see also K. HEIDECKER, "Communication by written texts in court cases: Some charter evidence (ca. 800-ca. 1100)", in: *New Approaches to Medieval Communication*, ed. M. MOSTERT (Turnhout, 1999: *Utrecht Studies in Medieval Literacy* 1), pp. 101-126.

in a protest against the decision. The “socialisation” of his defeat in court is then more difficult.¹³

This way of looking at the problem is inspired by recent sociological research of twentieth century law courts, suggesting that the way legal proceedings are structured is decisive for the acceptance of law as a whole.¹⁴ While this analysis can presuppose that the procedures implemented functions in an already-differentiated environment, which was accustomed to autonomous discourses, this can not be assumed for a medieval society. As for the “modern” individual, taking a certain role in an autonomous discourse is something he is familiar with because it is part of his everyday life in modern society.¹⁵ As far as society itself is concerned, the existence of independent systems¹⁶ within modern society (law, economics, politics and so forth) and the creation of new ones is nothing that would astonish society. Around 1200, however, the growing autonomy of law was something new. As far as we can see, at that time hardly any models were available of acting in independent systems.¹⁷ This

¹³ LUHMANN, *Legitimation durch Verfahren*, p. 112: “Funktion des Verfahrens ist mithin die Spezifizierung der Unzufriedenheit und die Zersplitterung und Absorption von Protesten”.

¹⁴ N. LUHMANN, *Legitimation durch Verfahren*; ID., “Kommunikation über Recht in Interaktionssystemen”, in: ID., *Ausdifferenzierung des Rechts: Beiträge zur Rechtssoziologie und Rechtstheorie* (Frankfurt am M., 1999), pp. 53-72 at pp. 60 ff.; ID., *Das Recht der Gesellschaft* (Frankfurt am M., 1993). For a discussion of Luhmann’s theses, see the critical approach of J. RÜCKERT, *Autonomie des Rechts in rechtshistorischer Perspektive* (Hannover, 1988: *Schriftenreihe der Juristischen Studiengesellschaft Hannover* 19), which is in part rejected by D. SIMON, “Rückerts Frage: Rezension zu Niklas LUHMANN, *Das Recht der Gesellschaft*”, *Rechtshistorisches Journal* 14 (1995), pp. 36-47; further: K. GÜNTHER, “Vom Zeitkern des Rechts: zu Niklas LUHMANN, *Das Recht der Gesellschaft*”, *Rechtshistorisches Journal* 14 (1995), pp. 13-35.

¹⁵ For LUHMANN, *Das Recht der Gesellschaft*, pp. 292 ff., modern individualism is essential for separated systems (such as “law”) to create a complexity of their own. For critics of the (sometimes simplistic) concept of the “Middle Ages” in Luhmann’s works, see O.G. OEXLE, “Luhmanns Mittelalter: Rezension zu N. LUHMANN, *Gesellschaftsstruktur und Semantik*, Bd. 3”, *Rechtshistorisches Journal* 10 (1991), pp. 53-66 (with reference to his idea of “individualism”), and LUHMANN’s reply: “Mein ‘Mittelalter’”, *ibidem*, pp. 66-70. For role-playing in modern societies, see E. GOFFMAN, *The Presentation of Self in Everyday Life* (New York, 1959). Illich—in addition to others—states that “individuality” in the modern sense of the word, began to emerge in the twelfth century (I. ILLICH, *Im Weinberg des Textes: Als das Schriftbild der Moderne entstand: Ein Kommentar zu Hugos ‘Didascalion’* (Frankfurt am M., 1991), pp. 27 ff. (originally published in English as: *In the Vineyard of the Text: A Commentary on Hugh of St. Victor’s ‘Didascalion’* (Chicago, 1993))).

¹⁶ The term “system” will be avoided in this paper, because it is associated with a complex modern society (N. LUHMANN, *Soziale Systeme: Grundriß einer allgemeinen Theorie* (Frankfurt am M., 1999)).

¹⁷ Even for the late Middle Ages, it is not at all clear how and to what extent we can talk, e.g. of a “private” and “business” life of a merchant. Insights into the relation between family and merchant-company that are still fundamental are given by M. WEBER, *Zur Geschichte der Han-*

meant that neither the commune nor the individual could rely on experience in operating in an autonomous area of conflict regulation. Therefore it is obvious that when such areas evolve, greater efforts will be required to mark the independence of the discourse. It was for the purpose of emphasis that these efforts had to be made by and during the proceedings themselves.¹⁸

When employing the strategy described above in an evolutionary process,¹⁹ the city administration would have to allow the formation of certain institutions or offices, independent of other administrative units and separated from the everyday business of the citizens. In fact, in Milan it can be observed that at the end of the twelfth century the *consules iustitiae* separated from the *consules communis* and became independent.²⁰ In the thirteenth century, additional "institutions" such as delegate judges, *iurisperiti* and *consiliarii*,²¹ whose tasks

delsgesellschaften im Mittelalter: Nach südeuropäischen Quellen (Stuttgart, 1889; reprint Amsterdam, 1964), pp. 128 ff.; an example is given by F.J. ARLINGHAUS, "Io, noi und noi insieme: Transpersonale Konzepte in den Verträgen einer italienischen Handelsgesellschaft des 14. Jahrhunderts", in: *Bene vivere in communitate: Beiträge zum italienischen und deutschen Mittelalter*—Hagen Keller zum 60. Geburtstag überreicht von seinen Schülerinnen und Schülern, ed. TH. SCHARFF and TH. BEHRMANN (Münster, 1997), pp. 131-153.

¹⁸ M.T. CLANCHY, *From Memory to Written Record: England 1066-1307*, 2nd edn. (Oxford and Cambridge, Mass., 1993), p. 193.

¹⁹ The strategies are not seen as the results of a meaningful search, but rather as the outcome of a variation/selection process, fostering the development of forms of proceedings more appropriate to a given communal society (the "environment"). For this concept, see LUHMANN, *Das Recht der Gesellschaft*, pp. 267 ff., and ID., "Evolution des Rechts", in: ID., *Ausdifferenzierung des Rechts*, pp. 11-34 at pp. 11 ff.

²⁰ For a survey of Milanese institutions, see MANARESI's introduction to *ACM*, pp. XXXVII ff.; C. SANTORO, *Gli uffici del comune di Milano e del dominio visconteo-sforzesco (1216-1515)* (Milan, 1968: *Archivio della fondazione italiana per la storia amministrativa*, "Prima collana" 7), pp. 13 ff. For the administration of the legal system, with special regard to the development of "files", see TH. BEHRMANN, "Von der Sentenz zur Akte: Beobachtungen zur Entwicklung des Prozeßschriftgutes in Mailand", in: *Kommunales Schriftgut in Oberitalien: Formen, Funktionen, Überlieferung*, ed. H. KELLER and Th. BEHRMANN (Munich, 1995: *MMS* 68), pp. 71-90. A reduction of public participation in Milanese civil litigations is stated by TH. BEHRMANN, "Der Rechtsakt und sein Publikum: Beobachtungen an Mailänder und Novareser Urkunden des 12. und 13. Jahrhunderts", in: *Formen der Verschriftlichung und Strukturen der Überlieferung: Studien über Gestalt, Funktion und Tradierung von kommunalem Schriftgut des 12. und 13. Jahrhunderts*, ed. H. KELLER and M. BLATTMANN (Münster, forthcoming in *MMS*); F.J. ARLINGHAUS, "Legitimationsstrategien in schwieriger Zeit: Die Sentenzen der Mailänder Kommunalgerichte im 12. und 13. Jahrhundert", in: *ibid.* It is no contradiction that the concept of "direct" participation of the whole city commune to legitimize political and legal proceedings is still predominant in the Italian communes: see P. SCHULTE, "'Omnis homo sciat et audiat': Die Kontrolle kommunalen Handelns in Como im späten 12. und 13. Jahrhundert", *Mélanges de l'École française de Rome: Moyen Âge* 110 (1998), pp. 501-547.

²¹ M. CHIANTINI, "Dal mondo della prassi: Una raccolta di *consilia* della seconda metà del Duecento per la curia podestarile di San Gimignano", in: *Consilia im späten Mittelalter: Zum*

were to work on limited problems,²² were appointed *ad hoc* during the proceedings with the consent of the parties, thus creating even more autonomy from the central city administration.²³ The key element here is the fact that these “institutions”, dealing with a certain case, could refer to each other and hence create a more independent judicial procedure, strongly based on self reference. Because the “institutional” side of the problem is analyzed elsewhere,²⁴ we can be brief here and concentrate on the manner in which communication patterns were changed by the reorganisation of the legal procedures.

Two Theses

For the given historical situation, the increased institutional independence of the courts seems to have been insufficient to create an autonomous area for dealing with disputes and transforming the conflict from a quarrel between two

historischen Aussagewert einer Quellengattung, ed. I. BAUMGÄRTNER (Sigmaringen, 1995: *Studienreihe des Deutschen Studienzentrums in Venedig* 13), pp. 33-50; for Milan, see F.J. ARLINGHAUS, “Legitimationsstrategien”. For a general survey of this type of source, see I. BAUMGÄRTNER, “Stadtgeschichte und Consilia im italienischen Spätmittelalter: Eine Quellengattung und ihre Möglichkeiten”, *Zeitschrift für historische Forschung* 17 (1990), pp. 129-154; see also the papers of M. ASCHERI, “Le fonti e la flessibilità del diritto comune: Il paradosso del *consilium sapientis*”, in: *Legal Consulting in the Civil Law Tradition*, ed. M. ASCHERI, I. BAUMGÄRTNER and J. KIRSHNER (Berkeley, 1999: *Studies in Comparative Legal History*), pp. 11-53, and I. BAUMGÄRTNER, “Einführung”, in: *ibid.*, pp. 1-8.

²² The notaries e.g., by now not only protocol the responses to the testimonies, but in fact interview the witnesses separately without the participation of the *consules iustitiae*; see *infra*, notes 45 and 56.

²³ The similarities to legal proceedings in church courts are obvious, but it must be emphasized that in the context of the legal administration of the Church or the city, these “institutions” take on different meanings. The *iudex delegatus* e.g., is found in canon law and in the proceedings of urban courts, but the reason why they were employed and the meaning of the institution are quite different. For the *iudex delegatus* in Milan, see W. ENGELMANN, *Die Wiedergeburt der Rechtskultur in Italien durch die wissenschaftliche Lehre: Eine Darlegung der Entfaltung des gemeinen italienischen Rechts und seiner Justizkultur im Mittelalter unter dem Einfluß der herrschenden Lehre der Gutachterpraxis der Rechtsgelehrten und der Verantwortung der Richter im Syndikatsprozeß* (Leipzig, 1938), pp. 328 ff. For the function of delegate judges in ecclesiastical trials, see W.M. PLÖCHL, *Geschichte des Kirchenrechts, 2: Das Kirchenrecht der abendländischen Christenheit*, 2nd edn. (Vienna and Munich, 1962), pp. 83 ff.; P. HERDE, *Beiträge zum päpstlichen Kanzlei- und Urkundenwesen im dreizehnten Jahrhundert* (Munich, 1967: *Münchener Historische Studien, Abteilung geschichtliche Hilfswissenschaften* 1), pp. 125 and 217 ff.; ID., *Audientia litterarum contradictarum: Untersuchungen über die päpstlichen Justizbriefe und die päpstliche Delegationsgerichtsbarkeit vom 13. bis zum Beginn des 16. Jahrhunderts*, 2 vols. (Tübingen, 1970: *Bibliothek des Deutschen Historischen Instituts in Rom* 23), 1, pp. 181 ff. and 191 ff.

²⁴ ARLINGHAUS, “Legitimationsstrategien”.

members of different social groups into a litigation between two individuals—at least in so far as possible. *Combined* with the institutional alterations, fundamental changes in communication patterns in court were necessary. Changing the way people communicate with each other during the proceedings can be interpreted as essential for demonstrating the autonomy and otherness of the newly-created discourse to all participants. These changes took place supported by a specific use of written texts in the litigation. To put it briefly:

First: the way writing was used in courts in the thirteenth century created a specific form of communication between the judges and the parties involved. More than was the case in the twelfth century, a great part of the verbal exchange in the thirteenth century consisted in reading out documents and protocols. Tying communication to written texts can be regarded as a successful way of creating a specific discourse in court, making it distinguishable from others.²⁵

Second: these changes in the structure of communication go hand in hand with a different form of participation by the person in the proceedings. For his part, the individual now had to comprehend that his actions in court are different from other actions of daily life. At the same time, this had to be signaled to his social relations. The changed modus of speech, that is verbal communication on the basis of written texts, helped to mark the difference between the role the individual adopted in court and the way he acted in his ordinary social life.

²⁵ For differences between oral and the written language, see W.J. ONG, *Orality and Literacy: The Technologizing of the Word* (London, 1982), pp. 81 ff. Koch and Oesterreicher characterize the differences, generally defining "*Sprache der Nähe (oral)*–*Sprache der Distanz*" (written) as follows: "*Die Kombination 'Dialog', 'freier Sprecherwechsel', 'Vertrautheit der Partner', 'freie Themenentwicklung', 'Spontaneität' ... 'starkes Beteiligtsein', 'Situationsverschränkung, etc. charakterisieren den Pol 'gesprochen'*". (i.e. "*Sprache der Nähe*"). "*Dagegen Charakterisieren 'räumliche und zeitliche Trennung', 'festes Thema', 'völlige Öffentlichkeit', 'Reflektiertheit', 'geringes Beteiligtsein', 'Situationsentbindung', etc. den Pol 'geschrieben'*" (i.e. "*Sprache der Distanz*"). (P. KOCH and W. OESTERREICHER, "Sprache der Nähe–Sprache der Distanz: Mündlichkeit und Schriftlichkeit im Spannungsfeld von Sprachtheorie und Sprachgeschichte", *Romanistisches Jahrbuch* 36 (1985), pp. 15–43, at pp. 21 ff.; see also ID., "Funktionale Aspekte der Schriftkultur", in: *Schrift und Schriftlichkeit–Writing and its Use: Ein interdisziplinäres Handbuch internationaler Forschung–An Interdisciplinary Handbook of International Research*, 2 "Halb-bände", ed. H. GÜNTHER and O. LUDWIG (Berlin and New York, 1994–1995), 1, pp. 587–604. Their theses that "in principle" there is a continuity between the two poles cannot be discussed here. For the performance of medieval literature and the re-oralization of written texts, see F.H. BÄUML, "Autorität und Performanz: Gesehene Leser, gehörte Bilder, geschriebener Text", in: *Verschriftung und Verschriftlichung: Aspekte des Medienwechsels in verschiedenen Kulturen und Epochen*, ed. CH. EHLE and U. SCHAEFER (Tübingen, 1998: *ScriptOralia* 94), pp. 248–273, at p. 261.

How Can We Prove This?

Firstly, we must examine if and to what extent texts produced during the proceedings were read out in court. Was there a development towards more reading and less open oral dispute? Secondly, the function of the reading must be discussed. Can this development simply be attributed to a general growth of the importance of writing? Is it possible to differentiate between the use of writing, say, to aid the memory or for the structuring of arguments and the use of texts as a substitute for verbal exchange? And if a “non-rational” employment of texts can be observed, what is the advantage of reading as compared to the use of spoken formulae in the proceedings?

To answer these questions, one must determine as precisely as possible how legal proceedings in Northern Italy in the twelfth and thirteenth centuries were performed. Two different kinds of sources will be taken into account: Documents, which mainly means the judgements of the city courts, and the *ordines iudicarii*. This paper will focus on the sentences passed by Milanese courts, but San Gimignano and Bologna will also be taken into account. About 252 judgements have survived from Milan for the 136 years between 1140—only from this time onward one can speak of the beginning of a regular administration of justice by the *consules*²⁶—and 1276—the beginning of the government of the Visconti.²⁷ For 98 of these 136 years, at least one charter has been left to us, thus there is a relatively constant flow of documents from the observed period.²⁸

Each charter provides information about certain items of a lawsuit, including who the litigants were, who decided the case, the names of the witnesses and scribes present, etc. It also reports on the claims put forward by the parties and, important for the question being raised here, how and under what circumstances these statements were made (see examples below). If it is true that by looking at the charters we can get as clear an idea as possible concerning how legal proceedings in Milan were put into practice, it is also true that most of the documents are quite brief with respect to the procedure as such. More detailed

²⁶ H. KELLER, “Gli inizi del comune”, p. 53; A. PADOA SCHIOPPA, “Aspetti della giustizia milanese dal X al XII secolo”, in: *Atti dell'11° Congresso internazionale di studi sull'alto medioevo*, pp. 459-549, at pp. 516 ff.

²⁷ The sentences—together with numerous other Milanese communal documents—have been edited in: *ACM* (until 1216), *ACM sec. XIII 1*, *ACM sec. XIII 2.1* and *ACM sec. XIII 2.2*. For a diplomatical description of the Milanese communal *sententiae*, see *ACM*, pp. CVI-CVIII.

²⁸ Only for the periods 1158-1169 and 1243-1246 no judgements have survived, mainly due to military actions and for political reasons; for the statistics, see ARLINGHAUS, “Legitimations-strategien”.

information is available from the *ordines iudicarii*. This type of source can be regarded as a kind of handbook-literature, written to inform judges, notaries and advocates about the way a legal trial should be held.²⁹ Often written by learned jurists with experience in everyday legal affairs, in explaining the procedure the *ordines* refer either to the practice in court, as observed by the authors, or to other legal texts.³⁰

Twelfth-Century Court Cases

In the middle of June 1143, the consuls of Milan were asked to decide in a lawsuit between the monastery and the chapter of S. Ambrogio. The dispute concerned to which of the two parties the rights to the altars of the church of S. Ambrogio belonged, which of the two was allowed to put bells into the tower, and which party was responsible for the burning of incense. After the canons' oral presentation of their claims (*dicebant*) and the monks' response to this (*respondebant*), they agreed to meet in the house of the archbishop the following day. The statements of the parties at the next meeting were also recorded comprehensively in the *sententia*, the written decision of the court. A main point of reference in the decision was an older written agreement between the monastery and the chapter. It provided equal rights for both communities on the donations to the altars of the church. In spite of the importance of this docu-

²⁹ A survey of the *ordines* of the twelfth century is given by L. FOWLER-MAGERL, *Ordo iudiciorum vel ordo iudiciarius: Begriff und Literaturgattung* (Frankfurt am M., 1984; *Ius Commune: Veröffentlichungen des Max-Planck-Instituts für Europäische Rechtsgeschichte, Sonderhefte* 19), pp. 1-31. GIULIELMO DURANTIS, *Speculum iudicale*, probably the most famous book of its kind, was written between 1271 and 1276, and first "updated" between 1289 and 1291 (G. DURANTIS, *Speculum iudicale: Illustratum et repurgatum a Giovanni Andrea et Baldo degli Ubaldi* (Basel, 1574; reprint Aalen, 1975)). Editions of a number of *ordines*, mainly from the thirteenth century, have been published by L. WAHRMUND in the series *Quellen zur Geschichte des römisch-kanonischen Prozesses im Mittelalter* (Innsbruck, 1905-1931; reprinted during the 1960s in Aalen). Special "Handbooks" for notaries also give descriptions of how legal proceedings were performed (*Die Ars Notariae des Rainerius Perusinus*, ed. L. WAHRMUND (Innsbruck, 1917; *Quellen zur Geschichte des römisch-kanonischen Prozesses im Mittelalter* 3, Heft 3; repr. Aalen, 1962), pp. 147 ff. rubric CCXCI; ROLANDINI RODULPHINI BONONIENSIS, *Summa totius artis notariae* (Venice, 1546; reprint Bologna, 1977), f. 34r ff).

³⁰ But a reference to the *Liber extra* or the *Codex Iustiniani* does not essentially mean that the texts are pure theory. Given the aim of the *ordines*, it is more likely that even here the texts describe what "really" happened in communal courts, maybe justifying the proceedings by mentioning authoritative texts (see WAHRMUND, "Einleitung", in: *Die Ars Notariae des Rainerius Perusinus*, pp. XXXVIII ff. and XLVII ff.).

ment, it is not cited in the *sententia* but—like the oral testimonies of the parties—recorded in the form of indirect speech.³¹

In October 1145 the city consuls of Milan had to judge in a dispute between the archpriest of Santa Maria ad Montem, Landulf, and Ardericus surnamed Patarinus. “For this was the conflict (*Lis talis enim erat*)”, so the charter begins, and it continues thus: the archpriest said (*dicebat*) that Ardericus had appropriated a piece of land which belonged to the Church. Ardericus answered, that this land had been given to him by his father Anricus, and that he had received it from Valbertus. And he presented “witnesses to whom no credibility was given (*testes, quibus nulla fuit data fides*)”. Then, in turn, Landulf again made statements, which were supported by his witnesses, and so forth.³²

The *sententiae* of the urban courts written around 1150, more often present themselves as memoranda on regulating particular conflicts rather than as judgements. They record the things that happened in court as in a protocol. Besides the judgement, no other written record was produced during the proceedings. If older documents were of any importance, their content was referred to in indirect speech. With the exception of a few cases—such as in a charter of 1155³³—the text is not cited in the *sententiae*.

³¹ ACM, No. 9, June 1143: “*Ad hec ipse abbas et monachi respondebant quod tota oblatio ipsorum altarium seu oraculorum sicut superius legitur ad ipsum monasterium ratione pertinere debeat; sed quia quondam discordia fuit inter ipsum monasterium et ipsam canonicam de iam dictis oblationibus et aliis quam pluribus capitulis, dicebat ipse abbas sicut terminata et finita fuit adtendere et adimplere volebat, et de ipsa concordia instrumentum unum ostendebat; ... Anselmus iudex pro eo quod consules fecerant eum, inbreviare ipsam convenientiam in cartula una quam in sua tenebat manu, per iussionem et parabolam ipsorum consulum iussit atque precepit eisdem abbati et monachis et preposito et canonicis ut ambe partes sic adtendant et tacite et contente sint sicut legitur de oblatione et sepellitione in cartula quam ante hos dies et annos fecerunt Amizo archidiaconus*”.

³² ACM, No. 13, 18 October 1145: “*Lis enim talis erat. Dicebat ipse archipresbiter quod ipse Ardericus iniuste detinet mansum unum quod dicitur de Violare ei reiacet in eodem loco Vellate et est iuris ipsius ecclesie. Ipse vero Ardericus respondebat quin ipse quin Anricus avus eius quin Vualbertus de Vellate, qui dederat predictum mansum eidem Anrico avo suo, possederant per sexaginta annos et dicebat, quod pertinuit eidem Vualberto beneficiario more; et de predicta possessione dedit testes quibus nulla fuit data fides. Quod ipse archipresbiter prorsus negabat et insuper dicebat si hoc verum fuisset, tamen non debet prodesse eidem Arderico pro eo quod ipse quondam Anricus avus eius fecerat finem de predicto manso in manu presbiteri Goldi; et de hoc dedit testes qui fuerunt Aripandus de Azello et Lazarus ... qui dixerunt sub iureiurando vidisse discordiam inter Anricum Patarinum ... et pre Goldum de Sancta Maria ad Montem de manso de Villaira ... ubi viderunt ipsum Anricum facere finem in manu ipsius pre Goldi de predicto manso, et usumfructum habere debebat ipse Anricus donec vivus fuerit, et hoc fuit minus est de annis triginta et duobus et plus de annis viginti ...*”.

³³ ACM, No. 33, 29 June 1155: “*... idque publico instrumento insinuari volebant, asserentes prefatum Gilbertum consulem Mediolanensem ita statuuisse per concordiam utriusque partis, unde*

It is more than doubtful whether the charters presented as evidence in Milanese courts at that time were read out aloud in public, because "*ostendere*" is the only verb used. This is an expression that in later years was usually accompanied by "*legere*" or "*perlegere*".³⁴ A sidelong glance at quarrels between two communes shows that even in more important cases of that time, even if famous jurists like Obertus de Orto³⁵ were among the judges, most likely the charters were not read in public. In a litigation between the communes of Piuro and Chiavenna, the Milanese *consules communis* functioned several times as an arbitration tribunal. In their decision from 14 April 1154 we read: "After having heard and seen these and many other notices of sentences, Guertius confirmed ... (*His et aliis multis auditis et visis notitiis sententiarum, laudavit Guertius* ...)".³⁶ It seems likely that "*auditis*" refers to the verbal dispute reported in the charter and "*visis*" to a (silent) inspection by the judge of older *sententiae* mentioned in the text. By contrast, in later Milanese documents "*videre*" seldom stands alone but is usually accompanied by "*legere*" or "*perlegere*", signaling that the charters were not only "seen" by the judge but also read aloud. When

quendam brevem hostendebant ipsius Gilberti precepto compositum, cuius verba hec sunt: 'In nomine domini nostri Iesu Christi. Breve recordacionis de concordia hominum Clavennatum et Pluriensium ...'".

³⁴ One of the first examples dates from 10 July 1207, ACM, No. 298: "... et super his quoddam instrumentum investiture feudi hostendebat. His et aliis auditis, et visis et perlectis scrituris et instrumentis ab utraque parte hostensis ... prefatus Robbacomes talem in scriptis protulit sententiam ...". As early as the early eleventh century, the *ostensio cartae* played an important role in Italian courts; it is not yet clear whether at that time the document was read out or simply paraphrased (see BOUGARD, "Falsum falsorum iudicum consilium", pp. 300-311; ID., *La justice dans le royaume d'Italie de la fin du VIII^e siècle au début du XI^e siècle* (Rome, 1995: *Bibliothèque des écoles françaises d'Athènes et de Rome* 291); and WICKHAM, "Justice in the Kingdom of Italy", p. 190). For the use of writing in earlier times, see H. BRUNNER, "Das Gerichtszugnis und die fränkische Königsurkunde", in: *Abhandlungen zur Rechtsgeschichte: Gesammelte Aufsätze* I, ed. K. RAUCH (Weimar, 1931), p. 443 (first published in: *Festgaben für A.W. Heffter* (Berlin, 1873)); *Recht und Schrift im Mittelalter*, ed. P. CLASSEN (Sigmaringen, 1977: *Vorträge und Forschungen* 23); a recent bibliography in: *New Approaches to Medieval Communication*, pp. 268-275.

³⁵ For Obertus, see P. CLASSEN, "Richterstand und Rechtswissenschaft in den italienischen Kommunen des 12. Jahrhunderts", in: ID., *Studium und Gesellschaft im Mittelalter*, ed. J. FRIED (Stuttgart, 1983: *Schriften der MGH* 29), pp. 27-126, at p. 50. For the problem in general, see J. FRIED, *Die Entstehung des Juristenstandes im 12. Jahrhundert: Zur sozialen Stellung und politischen Bedeutung gelehrter Juristen in Bologna und Modena* (Cologne and Vienna, 1974: *Forschungen zur neueren Privatrechtsgeschichte* 21).

³⁶ ACM, No. 30. For the Piuro-Chiavenna trial, see H. KELLER, "Mehrheitsentscheidung und Majorisierungsproblem im Verbund der Landgemeinden Chiavenna und Piuro (1151-1155)", in: *Civitatum Communitas: Studien zum europäischen Städtewesen: Festschrift Heinz Stoob zum 65. Geburtstag*, ed. H. JÄGER, F. PETRI and H. QUIRIN, 2 vols. (Cologne, 1984: *Städteforschung A* 21), 1, pp. 2-41, at pp. 10 ff.

in 1208 on one side Arialodus, the abbot of the monastery of S. Ambrogio, and “on the other side the brothers Beltramus and Petrinus surnamed De Figino and Boziardus De Intusvineam” met once again in the Milanese communal court, reference to the verbal dispute and to an older judgement were given as follows: “Having heard, seen and read these and other aforementioned instruments of sentences, forenamed (judge) Paganus ... condemned ... (*His et aliis auditis, viso et perlecto suprascripto instrumento sententie, prefatus Paganus ... condemnavit ...*)”.³⁷ And it seems that as in 1208 and also around 1150, if presented documents were read out in public, this was explicitly stated. When the representatives of the *Lega lombarda* ordered the citizens of Reggio not to disturb the citizens of Cavriago, they were told to do so “as was written in the charter and was read there by the aforesaid Gerardus Faber (*sicut in carta scriptum erat, et ibi fuit lecta per predictum Gerardum Fabrum*)”.³⁸

A short excursion is necessary at this point. Like Ivan Illich, Paul Saenger and others state, there was a change in the way texts were read, starting from the twelfth century. It is no longer essential to “hear” the words of a book. In Italy earlier than elsewhere, silent reading combined with a more analytical approach to texts now became more and more commonplace.³⁹ Viewed in this context it is not unlikely that charters were not read out in court during the twelfth century. And the emphasis that was put on reading aloud in courts in the thirteenth century, together with the specific way this was employed, can hardly be understood as the consequence of a “medieval” necessity of hearing the words of a text. It is interesting to see that from the late twelfth century onward, the instruments which parties presented in court as evidence were more and more often read silently (“*diligenter inspectis*”) by the judge,⁴⁰ while the texts

³⁷ ACM, No. 312, 28 March 1208.

³⁸ ACM, No. 67, 14 December 1168. In 1164 in Verona, for unknown reasons Albertus Tinca gave a judgement to his “assessor” Guido “*ut eam legeret*” (J. FICKER, *Forschungen zur Reichs- und Rechtsgeschichte Italiens* (Innsbruck, 1868-74), IV, No. 134, pp. 176 ff.).

³⁹ ILLICH, *Im Weinberg des Textes*, pp. 65 ff.; P. SAENGER, “Silent reading: Its impact on late medieval script and society”, *Viator: Medieval and Renaissance Studies* 13 (1982), pp. 367-414, at pp. 385 ff.; ID., *Space Between Words: The Origins of Silent Reading* (Stanford, 1997: *Figurae: Reading Medieval Culture*), pp. 271 ff. If in the case of England it is true that documents mostly had to be “heard”, in the first half of the thirteenth century charters might have been “shown”, that is inspected, in court (CLANCHY, *From Memory to Written Record*, pp. 267 ff. and 272 ff.).

⁴⁰ In a case heard by Arnaldus, the defendant presented charters, which were “inspected” by Arnaldus: “*Et de his publica instrumenta ostendebat* (the defendant) ... *Quibus et aliis visis et auditis, instrumentis quoque utriusque partis diligenter inspectis ... Arnaldus ... condemnavit ...* (ACM, No. 228, 20 April 1200); a few examples of many are successively ACM, No. 245, 20 April 1202; ACM, No. 274, 20 December 1204; ACM, No. 283, 26 October 1205. For “*inspexere*” and “*videre*” as verbs which indicate silent reading, see SAENGER, “Silent Reading”, p. 384.

produced *during* the proceedings had to be read aloud.⁴¹

But we are jumping ahead. Up to the end of the twelfth century, the situation of communication can be described as follows: Both parties, accompanied by their witnesses (and presumably other people socially related to them), appeared before four or six *consules communis*, who functioned as judges. In a more or less spontaneous battle of words, which probably included certain formulae commonly used in such a situation, they presented their arguments.⁴² The witnesses made their statements in the presence of both parties and in the presence of the witnesses of the opposite party. Then it was the turn of the *testes* of the second party to speak. It is obvious that with this form of implementing law, this form of stage-management, the people related to the litigants participated directly in the win-or-lose question. Both parties appeared accompanied by their supporters, entered into a verbal exchange and—because their supporters (the "*testes, quibus nulla fuit data fides*") appeared in part responsible—had a good chance that the indignation would be shared by their community, socialising the defeat.

Thirteenth-Century Court Cases

After the end of the twelfth and during the thirteenth centuries, the way of proceeding in the urban courts changed considerably. The *consules communis*, the "political" heads of the administration, were no longer responsible for civil litigation. Now, with the *consules iustitiae*, a somewhat independent institution dealt separately with the disputes.⁴³ The legal action no longer took place on one or two successive days; instead a long row of hearings was put into practice: there was a date of hearing for the plaintiff to bring in the charge,

⁴¹ see below, pp. 230–235.

⁴² As early as the eleventh century, in formal and informal dispute settlements, proceedings could include open verbal disputes (WICKHAM, "Justice in the Kingdom of Italy", pp. 232 ff., drawing a parallel between cases of the eleventh and late twelfth centuries (at p. 233); BOUGARD, "*Falsum falsorum iudicum consilium*", pp. 299 ff.; PADOA SCHIOPPA, "Aspetti della giustizia milanese", pp. 510 ff.).

⁴³ The discussion concerns the question whether the first appearance of the *consules iustitiae* can be dated back to the 1150s (when certain *consules causarum* are mentioned) or to the 1170s (when the term *consules iustitiae* is first found). But it is not before the late 1180s—which is important for the argument presented here—that they deal as an independent institution with civil litigation, separate from the *consules communis*. For the discussion, see ACM, pp. LIII ff.; C. SANTORO, "Gli uffici", pp. 51; G. ROSSETTI, "Le istituzioni comunali a Milano", pp. 97 ff.; and P. CLASSEN, "Richterstand", p. 46. For the institutional separation, see ARLINGHAUS, "Legitimationsstrategien".

another to obtain an initial response from the defendant, one for the *iuramentum calumniae*, and so forth—in total usually more than ten dates for one case.⁴⁴ The examination of the witnesses was now the task of the notaries, who questioned them without the presence of the judge and protocolled the answers.⁴⁵ But this is not the only important part of the proceedings that took place without the official judge, the *iudex ordinarius* (which is the *consul iustitiae*) being present. More and more *consiliarii*, *iurisperiti* and/or *delegati* were appointed during the proceedings to deal with the case.⁴⁶

Before examining two stages of the procedure in detail (the pronouncement of the sentence and the reading of the witness protocols), a short comparison of the Milanese charters written around 1150 and 1250 shall be presented. The *sententia* written down in 1264 over a case heard by Gualterius Balbus can be seen as a collection of the important documents written during the proceedings. Apart from a little entry sentence at the beginning and a note at the end, the charter consists of a copy of the plaint (*libellus*) and the insertion of the judgement.⁴⁷ Comparing the *sententia* of 1143 (see note 31) with that of 1264, we

⁴⁴ G. DOLEZALEK, *Das Imbreviaturbuch des erzbischöflichen Gerichtsnotars Hubaldus aus Pisa, Mai bis August 1230* (Cologne and Vienna, 1969: *Forschungen zur neueren Privatrechtsgeschichte* 13), pp. 43 ff.; for Verona, see P. LÜTKE-WESTHUES, *Die Kommunalstatuten von Verona im 13. Jahrhundert. Formen und Funktionen von Recht und Schrift in einer oberitalienischen Kommune* (Frankfurt am M. etc., 1991: *Gesellschaft, Kultur und Schrift: Mediävistische Beiträge* 2), pp. 219 ff.; for Bologna, with interesting insights, M. VALLERANI, "L'amministrazione della giustizia a Bologna in età podestarile", *Atti e memorie della Deputazione di Storia Patria per le Province di Romagna* 43 (1992), pp. 291-316. A general survey is given by K.W. NÖRR, "Reihenfolgeprinzip, Terminsequenz und Schriftlichkeit: Bemerkungen zum römisch-kanonischen Zivilprozeß", *Zeitschrift für Zivilprozeß* 85 (1972), pp. 160-170.

⁴⁵ One of the first references of reading out a witness protocol in a Milanese sentence dates from 9 February 1195 (*ACM*, No. 188). The examination of witnesses in northern Italy is explained by H. HIMSTEDT, *Die neuen Rechtsgedanken im Zeugenbeweis des oberitalienischen Stadtrechtsprozesses des 13. und 14. Jahrhunderts* (Berlin and Leipzig, 1910: *Zivilprozessrechtliche Forschungen* 5), pp. 79 ff.; G. DOLEZALEK, *Das Imbreviaturbuch*, pp. 54 ff.; H. V. VOLTELLINI, *Die Südtiroler Notariats-Imbreviaturen des 13. Jahrhunderts* 1 (Innsbruck, 1899: *Acta Tirolensia* 2; reprint Aalen, 1973), p. CLXII.

⁴⁶ ENGELMANN, *Die Wiedergeburt der Rechtskultur*, pp. 243 ff. (*consiliarii*), pp. 328 ff. (*iudices delegati*); G. ROSSI, *Consilium sapientis iudiciale: Studi e ricerche per la storia del processo romano-canonico, secoli XII-XIII* (Milan, 1958), pp. 48 ff.; M. ASCHERI, "Diritto comune, processo e istituzioni: Ovvero della credibilità dei giuristi (e dei medici)", in: ID., *Diritto medievale e moderno: Problemi del processo, della cultura e delle fonti giuridiche* (Rimini, 1991), pp. 195 ff. For a survey on *consilia*, see *Consilia im späten Mittelalter*. For the similarity in the tasks of *delegati* and *iurisperiti* in Milan, see ARLINGHAUS, "Legitimationsstrategien".

⁴⁷ *ACM* sec. XIII 2.2, No. 359, 8 March 1264: after a short introduction, the *libellus* is cited, followed by the judgement and a short comment (starting with "*pronunciavit*", third person sing.). Introduction: "*Super questione que vertebatur coram ... Gualterio Balbo ... inter dominum Lavi- zium Villanum canonicum ecclesie Sancti Laurentii Maioris Mediolani et syndicus capituli ipsius*

find that both documents appear more or less to be protocols of the legal action that took place, in fact as protocols of the central arguments spoken in court. But while the first charter reports an open verbal exchange, the last presents itself as a composition of texts that were read out—texts, it should be emphasised, that were written only for and during the legal proceedings.

To see how these texts were used in court, let us look at the way the *iurisperiti* communicated with the judge. After 1250, in almost every case the "ad hoc set-up" of this "institution" can be observed.⁴⁸ Analyzing the *sententiae*, it seems that now either some stages of the proceedings were performed twice (once in front of the *iudex ordinarius* and once in the presence of the appointed *iurisperiti*),⁴⁹ or all of the decisive parts were performed by the *iurisperitus*, and the "official judge" only read the verdict, which had already been written down by the *iurisperitus*. A good example of the latter is the *sententia* of 1264 referred to above. Admittedly, it was the judge Gualterius who seemed to appoint the *iurisperitus* Guido Nadivus, but only the latter "saw witnesses (*vidit testes*)" and "diligently saw, heard and examined the rights, the allegations and the arguments of both parties (*diligenter vidit et audivit et examinavit iura et allegationes et rationes utriusque partis*)", while Gualterius only "*pronunciavit*", that is, pronounced the *consilium*/judgement given by Guido.⁵⁰ For San Gimignano, more than 100 of these *consilia* have survived from the second half of the thir-

... ex una parte, et Biriamum de Citelago ... In qua questione talis porrecta fuit petitio, tenor cuius talis est: [cited libellus:] In nomine Domini. Ego Lavizius Villanus ... peto quatenus Biriamus de Citelago ... michi suprascripto nomine exhibeat et consignet omnes fructus, redditus et proventus, de quibus datur decima, qui fuerunt in infradictis terris ... [cited judgement:] In nomine Domini. Nos predictus dominus Gualterius consul Mediolani, habito consilio domini Guidonis Nadivi iurisperiti et sotiorum nostrorum, consulum Mediolani, qui vidit testes ... et qui diligenter vidit et audivit et examinavit iura et allegationes et rationes utriusque partis, condemnamus predictum Biriamum ut hinc ad decem dies proximos det et solvat ... ut de cetero omni anno det et solvat eidem domino Lavizio nomine illius ecclesie decimam omnium fructuum illarum terrarum ... [last comment:] Dictus dominus Gualterius Balbus pronuntiavit ut supra, presentibus partibus, videlicet [Names] ... ex una parte, actores, et [Names] ex altera. Actum in foro iudiciali comunis Mediolani. Interfuerunt ibi testes ...". What might cause some difficulties is the "*condemnamus*", indicating that Gualterius and Guido worked together on the case. As described in the charter, they did so separately, and when Gualterius read the verdict to the public, Guido very likely was not present, because his name is found neither among the witnesses nor elsewhere.

⁴⁸ For a statistical survey up to the year 1276, see ARLINGHAUS, "Legitimationsstrategien". One of the few exceptions in the period: the *sententia* from 6 July 1248 (*ACM sec. XIII 1*, No. 492). For the last quarter of the thirteenth century, see *Gli atti del Comune di Milano nel secolo XIII*, 3, ed. M.F. BARONI, (Alessandria, 1992), No. 20, post 14 June 1277; No. 53, 17 December 1277; No. 87, 14 March 1279; No. 101, 23 June 1279; No. 126, 2 April 1280; No. 273, 3 June 1283; many more examples could be cited.

⁴⁹ 11 April 1256, *ACM sec. XIII 2.1*, No. 139; 1 August 1256, *ACM sec. XIII 2.1*, No. 152.

⁵⁰ See *supra*, note 47.

teenth century.⁵¹ With their format of little papers, these differ significantly from the *consilia* of the fourteenth and fifteenth centuries⁵² and correspond to how reference is given to these writings in the Milanese *sententiae*. Juridical arguments are hardly ever found in these little texts; usually, no reasons were even given for the decision made by the *iurisperitus* and sent to the *iudex ordinarius*. It thus seems very unlikely that presenting an “expert’s” report was the real function of the *consiliarii*, at least in the thirteenth century.⁵³ But what is more important for the argumentation proposed here is how the reading of the sentence was staged. As we learn from little notes put on the *consilia*, the *iurisperitus* wrote down the sentence, sealed the paper and sent it to the *iudex ordinarius*. But it was not until the next hearing that the latter broke the seal, unfolded the document and read it to the parties.⁵⁴ Here, the fact that the *iudex ordinarius* used the text of the *iurisperitus* when pronouncing the sentence can be interpreted in two ways: On the one hand this can be seen as a way of signalling both responsibility and distance to the *sententia* pronounced, thus leading to a fragmentation of possible protests against the sentence.⁵⁵ But here the second aspect must be emphasized. Binding his speech to the written text in this decisive stage of the legal proceedings prevented him from using expressions that could be interpreted as “personal”, underlining that not Gualterius but the *iudex ordinarius* was speaking. And here the difference between “person” and “role” is marked through the estrangement of verbal speech by using a written text.

The way written texts are used during the pronouncement of the sentence

⁵¹ For the following, see CHIANTINI, “Dal mondo della prassi”, pp. 46 ff.; ID., *Il consilium sapientis nel processo del secolo XIII: San Gimignano 1246-1312* (Siena, 1997), pp. XLIV and 7.

⁵² For examples from the fifteenth century, see I. BAUMGÄRTNER, “Rechtsnorm und Rechtsanwendung in der venezianischen Terraferma des 15. Jahrhunderts: Die Consilia von Bartolomeo Cipolla”, in: *Consilia im späten Mittelalter*, pp. 79-111.

⁵³ M. CHIANTINI, *Il consilium sapientis*, p. XXXII (for San Gimignano); ARLINGHAUS, “Legitimationsstrategien” (for Milan). The same seems to be true for criminal proceedings in the second half of the thirteenth century, when *consilia* were given and read out without presenting any reasons (H. KANTOROWICZ, *Albertus Gandinus und das Strafrecht der Scholastik*, 1: *Die Praxis: Ausgewählte Strafprozessakten des dreizehnten Jahrhunderts nebst diplomatischer Einleitung* (Berlin, 1907), p. 120).

⁵⁴ That San Gimignano is not at all an exceptional case in the way *consilia* are presented in court, can be detected by the explanations given by DURANTIS, *Speculum iudiciale*, No. 11: “Porro auditis partium disputationibus et actis causae examinatis et consiliarii deliberatione praehabita diligenti, consilium in scriptis redactum, ne iudici relinquatur via malignandi, et secrete offerant, prout eis visum et aequum videbitur, qualiter iudex debeat condemnare vel absolvere”. For the reading of *consilia* in criminal proceedings, see KANTOROWICZ, *Albertus Gandinus und das Strafrecht der Scholastik*, p. 120.

⁵⁵ ARLINGHAUS, “Legitimationsstrategien”.

highlights different aspects of communication in court (such as "responsibility", "role-taking", "scattering protest" etc., as in the example just given), making it difficult to see how important the connection between "reading" and "role-taking" actually was. The specific use of witness protocols in legal proceedings of that time seemed to put stronger emphasis on the rehearsal of roles than on other aspects of communication. In Milan, like in many other Italian cities, after the last two decades of the twelfth century, the witnesses' statements were no longer made in front of the judge. "Private" notaries, appointed during the proceedings, were given the task of questioning the witnesses and protocolling the answers. Like the text of the *consilium*, the witness protocols were kept secret until they were read to the *iudex ordinarius* and the parties by the official court notaries in a separate hearing.⁵⁶ As pointed out above, in Milan in the second half of the thirteenth century, when the *iurisperiti* came into play, important stages of the proceedings were sometimes performed twice—in front of the judge and in front of the *iurisperitus*. Because he was now the one who really decided the case, the reading of the protocols in front of the *iudex ordinarius* can be seen as a kind of ritualised performance. It is interesting to see how, in his *ordo*, Aegidius Fuscarariis described the way witness protocols were dealt with in the hearings of the *iudex ordinarius*. Although written for advocates and notaries who mainly appeared in ecclesiastical courts,⁵⁷ the *ordo* was famous for its reference to the practice and was often copied in the second half of the thirteenth century.⁵⁸ In the hearing, the official judge ordered the notary to read the protocols. But it does not seem that the contents of these texts were very important at this particular hearing, because if there were many of these testimonies, says Aegidius, reading only a few of them sufficed: "*et sufficiat*

⁵⁶ ACM, No. 260, 21 October 1203: "*His et aliis auditis visis et perlectis testibus ipsius prepositi et viso instrumento emptionis, prefatus Miranus condemnavit ...*"; ACM, No. 309, 21 December 1207: "*His et multis aliis hinc inde auditis et testibus utriusque partis diligenter perlectis ... Ubertainus ... absolvit*"; ACM, No. 316, 12 December 1208; ACM, No. 317 (same day), and many more examples in the following pages of ACM. For Milan, see also *Liber Consuetudinum Mediolani*, pp. 59 ff. The handbooks of the notaries give a description of the procedure (see the editions of A. GAUDENTIO, *Ars notaria (Liber formularius)* (Bologna, 1892), p. 46 (written around 1214); *Die Ars Notariae des Rainerius Perusinus*, pp. 147 ff. rubric CCXCI, (written around 1233); and ROLANDINI RODULPHINI BONONIENSIS, *Summa totius artis notariae*, f. 344r ff.; for literature see *supra*, note 44).

⁵⁷ Several times he explicitly refers to the practice of the Bolognese city courts (cf. AEGIDIUS DE FUSCARARIIS, *Ordo iudiciarius*, ed. L. WAHRMUND (Innsbruck, 1916: *Quellen zur Geschichte des römisch-kanonischen Prozesses im Mittelalter*, 3, Heft 1; repr. Aalen, 1962), p. XLI, note 3, and p. 112).

⁵⁸ "Aegidius will in erster Linie tatsächliche Rechtsübungen darstellen. Er arbeitet für die Praxis und er schöpft aus dem Leben" (WAHRMUND, "Einleitung", in: AEGIDIUS DE FUSCARARIIS, *Ordo iudiciarius*, pp. XXIX ff. and XXXV ff., quotation at p. XXXI).

pro omnibus". Why this was sufficient becomes clearer when we look at the next step of the proceedings: To come to the point, when a close examination of the testimonies was to take place, the judge informed the parties that he did not want to go on with the proceedings. He now directed them to the *iurisperiti* and would only proceed to sentencing after receiving their counsel; that is, the counsel of one or two *consilarii* who separately dealt with the testimonies in detail.⁵⁹

It can be concluded that the hearings in which, in the presence of the *iudex ordinarius*, the testimonies were (in part) read was not meant to inform everybody about what the witnesses really said. This meeting was more a play, but a play performed with hardly any texts learned by heart. Because giving the information as such was not of any importance here, it might well have been possible to exchange some general formulaic sentences⁶⁰ if performing a legal ceremony were the only goal.⁶¹ But in contrast to formulae, by reading out witness protocols one can—as in a ceremony—give communication a rigid form and *at the same time* focus on a particular litigation.⁶² In this way, not only

⁵⁹ AEGIDIUS DE FUSCARARIIS, *Ordo iudiciarius*, p. 108: "Demum iudex praecipiat notario, quod legat dicta testium. Et notarius statim incipiat in nomine domini testes legere. Et si est magna multitudo testium vel attestaciones sunt nimis proluxae, legat dicta unius testis et sufficiat pro omnibus. Et ita servatur Bononiae"; *ibid.*, p. 115: "Adveniente termino praefixo ad allegandum et disputandum super dictis testium et aliis, tunc dicet iudex partibus: 'Ego intendo habere consilium et de peritorum consilio procedere ad sententiam. Si vos habetis aliquos suspectos, detis mihi in scriptis'".

⁶⁰ KOCH and OESTERREICHER, "Sprache der Nähe–Sprache der Distanz", pp. 29 ff., talk of "elaborated orality" ("*elaborierte Mündlichkeit*"), thus indicating the closeness of "ritual speech" to written texts. But it should be emphasized here that, despite all closeness, there is a difference between the two modes of speech. For ritual speech and written text, see also KOCH and OESTERREICHER, "Funktionale Aspekte der Schriftkultur", pp. 593 ff.; ONG, *Orality and Literacy*, pp. 81 ff.

⁶¹ WICKHAM, "Justice in the Kingdom of Italy", p. 194, states that the strongly formalized *placita* of the eleventh century were "occasions whose entire ideology was the maintenance of justice" and "in the Italian kingdom public rituals were ... heavily, explicitly, associated with the law". It is likely that from the last decades of the twelfth century onwards the rituals focused more on the individual case than on "law" or "city administration" in general. For this purpose, it seems that different and new rituals—as e.g. elaborated forms of elections—were now being employed. For voting in Italian city communes, see H. KELLER, "Wahlformen und Gemeinschaftsverständnis in den italienischen Stadtkommunen (12.-14. Jahrhundert)", in: *Wahlen und Wählen im Mittelalter*, ed. R. SCHNEIDER and H. ZIMMERMANN (Sigmaringen, 1990: *Vorträge und Forschungen* 37), pp. 345-374.

⁶² If one looks at the role of the *forespeca* (*Fürsprecher*), who appears in courts north of the Alps up to the fifteenth century, considering phenomena such as "role-playing", "estrangement through speech" and "creating an autonomous discourse", it can be argued that his function comes close to what is observed here. A detailed analysis of the differences cannot be given here, but in general it can be said that the *forespeca* still acts in the context of "improvised theatre". For

justice in general but the specific dispute are staged as a distinct discourse. The questions formulated by the parties and the answers given by their witnesses now sounded quite different from the discussion of the same case in the tavern. For the parties, it was easier to understand their action in court as a role different from others. It offered a chance that it was clear for all to see that conflict regulations are allocated a special area of communication, created between "judge", "plaintiff" and "defendant"—roles now played by the participants.

Conclusion

Compared to the twelfth century, in the thirteenth century the proceedings of urban law courts took on more of an autonomous element within the social structure of the North Italian city communes. The legal action now consisted of several steps that in part took place in front of committee-like institutions, which were often created during the proceedings. Now the plaintiff did not meet the defendant in a direct confrontation, consisting of an open verbal exchange, surrounded by "his" witnesses. Only accompanied by his hired lawyer, sometimes even represented by him in his absence, he met the opponent in 10 or 15 dates of hearings in court. But giving legal proceedings another institutional "design" seems not to be enough to establish an independent discourse and enable a necessary "role-taking" in court. At a time when the separation of the "political" and the "juridical" sphere was not at all common, legal proceedings that claimed autonomy had to be staged in a specific way. In a period when merchants of the same town in a foreign country had to pay for the debts of their compatriots as a matter of course, it was convenient to transform the way the participants communicated in court into a distinct form in order to establish an independent discourse. To change the way people communicate can be considered a mainstay in creating a separate space for dealing with a quarrel.

Up to a certain degree this probably could have been done by using formulaic expressions here and there, such as can be observed in almost any kind of legal action. But this strategy has its limits, when not only the proceeding in general but also the specific dispute being dealt with has to be elaborated as an independent sector of communication in the urban cities of that time. And such independence was needed to give people living in an undifferentiated society the opportunity of successful "role-playing".

The massive use of writing in court opened up a way to mark even the

specific dispute as distinct. Michael Clanchy, referring to W.J. Ong, states: "writing anything down externalized it and—in that process—changed it ... to some extent".⁶³ By reading the written text aloud in court, this change cannot be undone. There is a certain "otherness" in the way things were now spoken by the judge, plaintiff and defendant, and it can be presumed that this other form of communicating was not attributed to the written text, but to the reader.⁶⁴ By attributing this other modus of speech to the person, his acting in court could be regarded as something that only took place in this context.⁶⁵ Tying verbal speech to written texts meant an estrangement from familiar situations of communication, laying a trench between the way the person communicated here and his unbound oral discussion elsewhere. Since this estrangement would be attributed to the way the person acted in court, his performance could now be defined as "role playing", a performance of scripted roles based on reading out texts.

It becomes clear that by restraining unbound verbal disputes in favour of reading texts, the situation of communication in court as well as the statements

⁶³ CLANCHY, *From Memory to Written Record*, p. 193; ONG, *Orality and Literacy*, p. 82: "By contrast with natural, oral speech, writing is completely artificial. There is no way to write 'naturally'".

⁶⁴ If a text was read out or performed, the written text almost disappeared, and what was heard was attributed to the one who read out the text (H. WENZEL, *Hören und Sehen, Schrift und Bild: Kultur und Gedächtnis im Mittelalter* (Munich, 1995), pp. 216 ff.; ID., "Boten und Briefe. Zum Verhältnis körperlicher und nicht-körperlicher Nachrichtenträger", in: *Gespräche–Boten–Briefe: Körpergedächtnis und Schriftgedächtnis im Mittelalter*, ed. H. WENZEL (Berlin, 1997: *Philologische Studien und Quellen* 143), pp. 86–105, at pp. 88 ff.). It is difficult to say what part the author plays in the minds of those who hear a text. Bäuml states that, for medieval literature which was read out or even performed, it is not yet clear whether the audience attributed what was heard to the author or to the reader: "Was in primärer Oralität kein Problem war, ist in der Vokalität durch die Gegenwart des Textes dadurch kompliziert, daß ... der Autor als persona und der Vorleser einander 'opakisieren' " (F.H. BÄUML, "Autorität und Performanz", p. 261). For our purposes, this is of minor importance as long as the audience does not attribute the "otherness" of speech to the text.

⁶⁵ Certainly, speech is here not only bound to written texts, but to written *Latin* texts, which may have strengthened the "otherness" of the communication. However, Latin was heard in church and, especially in the thirteenth century, spoken more and more in schools and universities (in the form of open verbal disputes!). For the abbot of the monastery of San Ambrogio or the trained lawyer of his adversary, hearing Latin in court probably did not mean any "estrangement" that could mark a difference from their everyday life. For a brief survey of the use of Latin in the Middle Ages, see F. BRUNHÖLZL, "Lateinische Sprache und Literatur", in: LDM 5 (1991), col. 1722–1735, esp. col. 1733; for England, see CLANCHY, *From Memory to Written Record*, pp. 260 ff. In Germany, during the thirteenth century even in law books the vernacular was the common language; see P. JOHANEK, "Rechtsschrifttum", in: *Die deutsche Literatur im späten Mittelalter (1250–1370)*, ed. I. GLIER (Munich, 1987: *Geschichte der deutschen Literatur von den Anfängen bis zur Gegenwart*, 3.2), pp. 396–431, with brief glances at France and Scandinavia.

of the individual were marked as "distinct". A specific discourse was established, which was able to signalize and withstand autonomy. Within the historical context of the thirteenth century city communes, that is: in a context of almost no experience with autonomous elements in urban societies, it was possible to establish a differentiated and specific area of discourse by excessively mobilizing the potential that lies in writing. To some extent, this probably lessened the strain put on the city community by conflicts between individuals. The question of whether this active "role-playing" might also have contributed to a differentiated construction of "role", "social context" and "self" *in general* must be left open.

Textualising Peasant Enquiries: German *Weistümer* between Orality and Literacy¹

SIMON TEUSCHER

German poetry and German law have risen from the same bed”, wrote Jacob Grimm in 1816.² This quote is from one of Grimm’s comments on his collection of German *Weistümer*. In his romantic quest for authentic Germanness, Grimm was attracted to these late medieval and early modern village laws, many of which are written in an expressive and popular vernacular. And he was even more attracted to the microcosm evoked in these texts. *Weistümer* give normative descriptions of the relationship between the peasants of a village and its lord, and depict rituals of lordship, which seem to belong to a remote past. Some of them even refer to internal issues of village life such as marriage and inheritance, trade of land, the use of common pastures and rights of way. Grimm took for granted that *Weistümer* represent transcripts of the interplay between lords’ questions and peasants’ answers regarding local customs, and that they were recorded during the legal enquiries (German: *Weisungen*, hence the term *Weistum*), which usually took place in the beginning of the semi-annual assemblies of village courts. To Grimm the collection of

¹ Research leading to this article was largely performed within the project “Schriftlichkeit, Kommunikationskultur und Herrschaftspraktiken im Spätmittelalter” under the direction of Roger Sablonier (University of Zurich). The project is sponsored by the Swiss National Foundation. Peter Brun and Andreas Kraenzle contributed significantly in the process by taking inventories, transcribing manuscripts and suggesting ways to trace the intriguing dependencies between them. I have bothered many people with earlier versions of this text and I am very grateful to them all, and particularly so to Franz J. Arlinghaus, James Robbins and Edna Yahil.

² J. GRIMM, *Von der Poesie im Recht* (Darmstadt, 1972), p. 8; first published in: *Zeitschrift für geschichtliche Rechtswissenschaft* 2 (1816).

Weistümer was part of the same project as his more famous collection of fairy tales. He considered these village laws as sources of an authentic, oral German culture—as records of popular legal ideas passed orally from one generation to the next from times immemorial.

Even today, many scholars consider *Weistümer* as documents that in some way reflect peasants' voices.³ Of course most scholars now agree that the provisions codified in rural village laws are usually not much older than the records themselves and that they mirror concerns contemporary with their codification.⁴ But in a continuation of what could be called the Grimm paradigm of *Weistümer* research, the texts are still thought of as originating in the late medieval aftermath of an oral rural culture where lordship was based on face to face negotiations between the lord and his peasants.⁵ This makes these documents particularly relevant to ongoing discussions on the cultural implications of growing literacy in the Middle Ages. The Grimm paradigm fits into theories connecting the proliferation of literacy with the rise of a modern, rational legal system.⁶ Within this theoretical framework, enquiries leading to records of customary law appear as the last traditional step before statutes issued by au-

³ G. ALGAZI, "Ein gelehrter Blick ins lebendige Archiv: Umgangsweisen mit der Vergangenheit im fünfzehnten Jahrhundert", *Historische Zeitschrift* 166 (1998), pp. 317-357; G. ALGAZI, "Tradition als Gespräch der Ungleichen: Bauern und Herren in der spätmittelalterlichen Dorfversammlung", in: *Eid und Wahrheitssuche: Studien zu rechtlichen Befragungspraktiken in Mittelalter und früher Neuzeit*, ed. S. ESDERS and T. SCHARFF (Frankfurt a.M., 1999: *Gesellschaft, Kultur und Schrift: Mediävistische Beiträge* 7), pp. 191-210; M. TOCH, "Asking the way and telling the law: Speech in medieval Germany", *Journal for Interdisciplinary History* 16 (1986), pp. 667-682. Cf. Bisson's similar approach to documents that more clearly originate in oral statements: T. BISSON, *Tormented voices: Power, Crisis, and Humanity in Rural Catalonia, 1140-1200* (Cambridge, Mass., 1998).

⁴ For a comprehensive survey of these discussions, cf. K.-H. SPIESS, "Einleitung: Die Weistümer und Gemeindeordnungen des Amtes Cochem im Spiegel der Forschung", in: *Ländliche Rechtsquellen aus dem kurtrierischen Amt Cochem*, ed. C. KRÄMER and K.-H. SPIESS (Wiesbaden, 1986), pp. *1-*32, and the contributions to: *Deutsche Ländliche Rechtsquellen: Probleme und Wege der Weistumsforschung*, ed. P. BLICKLE (Stuttgart, 1977).

⁵ In addition to the literature mentioned above, cf.: M. PROSSER, *Spätmittelalterliche ländliche Rechtsaufzeichnungen am Oberrhein zwischen Gedächtniskultur und Schriftlichkeit: Untersuchungen am Übergang von analphabetischen zu skripturalen Überlieferungsformen im Blickfeld rechtlicher Volkskunde* (Würzburg, 1991: *Veröffentlichungen zur Volkskunde und Kulturgeschichte* 47).

⁶ Cf. J. GOODY, *The Logic of Writing and the Organization of Society* (Cambridge, 1986: *Studies in Literacy, Family, Culture and the State*); B. STOCK, "Schriftgebrauch und Rationalität im Mittelalter", in: *Max Webers Sicht des okzidentalen Christentums: Interpretation und Kritik*, ed. W. SCHLUCHTER (Frankfurt a.M., 1988), pp. 165-183; K. KROESCHELL, *Deutsche Rechtsgeschichte*, 2 (1250-1650) (Reinbek, 1973; Opladen, 1992⁸), pp. 127-129; A. HOLENSTEIN, *Die Huldigung der Untertanen: Rechtskultur und Herrschaftsordnung (800-1800)* (Stuttgart, 1990: *Quellen und Forschungen zur Agrargeschichte* 36), pp. 198-216.

thorities inaugurated the age of modern legislation. Thus, the older a *Weistum* is, the nearer scholars assume it to be to an oral legal culture, whereas they expect later texts to be close to modern legislation.

Weistümer undoubtedly stand at an interface between the oral and the written. There are reasons, however, for questioning the accepted assumption which situates them on a temporal line leading from an oral to a literate society. A major problem is that little attention has been devoted to how *Weistümer* were actually established and used during the Middle Ages. In what follows I try to show, that the tension between orality and literacy in *Weistümer* should be understood to a great extent in the context of contemporary modes of document utilisation. This is not to say that *Weistümer* are not related to the cultural changes brought about by literacy. They are, but in a specific manner that proves to be revealing about the roles of the written and the spoken word in late medieval administration and lordship.

Throughout the twentieth century, students of *Weistümer* were more interested in the legal contents of texts than in their use. The historiography of *Weistümer* has largely represented a controversy about the extent to which the texts mirror the competing interests of peasants and lords. The underlying presumption about the use of these documents has been that they were somehow associated with negotiations between lords and peasants.⁷ Some recent studies, however, question the idea that codifying customary village laws primarily had to do with the lord-peasant relationship. Most village laws seem rather to have been codified during conflicts between competing lords who needed evidence of their possession of certain areas.⁸

We know even less about how *Weistümer* were used when first written down. For many of these texts, the tradition of their transmission is strikingly rich. They were continuously revised and rewritten. Slightly differing versions of the same text often appear successively in the form of individual rolls, as inserts in charters and tax lists, or as entries in cartularies. Until now, this abundance of versions has mainly been taken into account in order to find the “best” manuscript, that is the one presumed to represent the most trustworthy record of the peasant enquiry. However, each new copy and each redaction of a village law is indicative of a specific situation, in which the contemporaries actually

⁷ Cf. the literature referred to *supra*, note 3.

⁸ T. HILDBRAND, *Herrschaft, Schrift und Gedächtnis: Das Kloster Allerheiligen und sein Umgang mit Wissen in Wirtschaft, Recht und Archiv (11.-16. Jahrhundert)* (Zurich, 1996), pp. 229-248; I. EDER, *Die saarländischen Weistümer-Dokumente der Territorialpolitik* (Saarbrücken, 1978: *Veröffentlichungen der Kommission für saarländische Landesgeschichte* 8); T. BÜHLER-REIMANN, *Gewohnheitsrecht und Landesherrschaft im ehemaligen Fürstbistum Basel* (Zurich, 1972: *Rechtshistorische Arbeiten* 8).

used or at least intended to use the text. I will therefore compare different copies and versions of *Weistümer* and discuss late medieval practises of rewriting and adapting them to specific uses. And, more specifically, I will discuss how different versions were connected to the oral statements of peasants. I will present a view of *Weistümer* not only as transmitters of legal rules, but as evolving texts and documents with a specific materiality: as commodities, so to say, of political action.

My examples are taken from the particularly well-preserved collection of different manuscripts and versions of laws for villages belonging to the dominion of the Grossmünster College in Zurich. The college, which according to legend was founded by Charlemagne, exercised lordship over a number of villages around the lake of Zurich. The development of its over-all position as a lord was largely defined by major changes in the political landscape of eastern Switzerland.⁹ In the fourteenth century, most of the college's possessions seem to have been uncontested. Most of the few documented conflicts with competing lords concerned a single village, Höngg, where *ministeriales* of the counts of Habsburg made claims to some of the college's rights of lordship.¹⁰ In addition to this, the college at times faced difficulties with its own local representatives, such as the *villici* or stewards, who were blamed for disregarding their official duties in order to maximise their personal benefits from the villages they were in charge of.¹¹ By 1400 the Habsburg network of power had largely withdrawn from eastern Switzerland, leaving the college with an even more aggressive competitor. Throughout the fifteenth century, the City of Zurich expanded its lordship over the surrounding countryside and successfully established itself as a small territorial power.¹²

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The oldest versions of legal texts for villages belonging to the Grossmünster College were established in the relatively calm mid-fourteenth century. They were written in Latin and compiled in two almost identical volumes in the year 1346. Known as Books of Statutes, these represent the college's oldest

⁹ For a recent survey, see: R. SABLONIER, "The Swiss Confederation in the 15th Century", in: *The New Cambridge Medieval History* 7, ed. Ch. ALLMAND (Cambridge, 1998), pp. 645-670.

¹⁰ The Grossmünster was mainly challenged by members of the *ministeriales* family of the Seeheim (cf. Staatsarchiv Aargau, Wettingen, No. 318, 442/441).

¹¹ E.g. Staatsarchiv Zürich (STAZ) C I 2996.

¹² E. EUGSTER, "Die Entwicklung zum kommunalen Territorialstaat", in: *Geschichte des Kantons Zürich 1: Frühzeit bis Spätmittelalter*, ed. N. FLÜELER a.o. (Zurich, 1995), pp. 209-240.

systematic collection of privileges and statutes and are mainly concerned with the partition of administrative and liturgical duties among the canons and their servants. The Books of Statutes are exceptionally prestigious, heavy large-size codices, written on high-quality parchment, richly rubricated and embellished with outstanding late Gothic illuminations.¹³ And they contain laws for seven villages belonging to the Grossmünster, namely Höngg, Schwamendingen, Meilen, Albisrieden, Fluntern, Rüschlikon and Rüfers. Most of these texts are not *Weistümer* in the proper sense of the word. One exception is the law for the village of Höngg, which seems to be copied into the volumes from a charter. This is the only one of the texts that is introduced by a paragraph stating explicitly that its provisions represent a record of customs described by peasants at a local court assembly. The law for Höngg is also the only one to be worded in a colloquial style, which might in fact indicate that the text originates in oral enquiries.¹⁴ The laws for all the other villages are written in a complex Latin style.

These texts were probably all written simultaneously, considering the fact that they are closely interconnected. Instead of repeating provisions for every village, the texts often refer to one of the preceding village laws, stating that something is regulated as written above (such as: “*ut superscriptum in Höngg*”).¹⁵ In a similar way, the seven village laws are tied up with other sections of the volumes. For instance, the text for the wine-producing village of Fluntern states that the vintage is regulated “*prout alibi plenius est notatum*”, as fully noted somewhere else.¹⁶ Any reader familiar with the college’s Books of Statutes could easily find the detailed provisions in a section of the volumes dedicated to the college’s vines. There the regulations for Fluntern are contained in the copy of a charter from the year 1230 and in some comments attached to it later. Interestingly, this charter concerns neither village life nor the peasants’ relationship to their monastic lord at all. Instead, it describes the settlement of an internal college dispute between several canons who had come to disagree on the delimitation of their individual benefits from the vineyards in the village.¹⁷ This is but one of a number of examples of how the village laws form part of a complex canon of interlinked legal and administrative regulations, which is indicative for the possibilities of using the texts. Their contents

¹³ The volumes are MSS 10a and 10b in the Zentralbibliothek Zürich. They are edited and commented in: D.W.H. SCHWARZ, *Die Statutenbücher der Propstei St. Felix und Regula (Grossmünster) zu Zürich* (Zurich, 1952).

¹⁴ SCHWARZ, *Statutenbücher*, pp. 149-154.

¹⁵ SCHWARZ, *Statutenbücher*, p. 155; cf. 156-158, *passim*.

¹⁶ SCHWARZ, *Statutenbücher*, p. 157.

¹⁷ SCHWARZ, *Statutenbücher*, pp. 67-73.

could not be fully revealed by reading them out linearly. To understand them, a reader had to know how to look up regulations in other sections and how to use the tables of contents at the beginning of the volumes.

Even more provisions in the customary laws were clearly derived from older statutes without explicitly mentioning this. The table in the appendix shows proportions of these dependencies, taking the example of the beginning of the laws for the village of Fluntern.¹⁸ As in all the other villages' laws, the introductory passage states the provost's right to summon the population to the local court assemblies twice a year, where they were to attend their lord's judgements in civil and criminal cases. All these passages appear to be paraphrases of the first text in the Books of Statutes, which is a description of the provost's duties. There it is stated that the provost, on behalf of the college, but at his own expenses is obliged to ride out twice a year to every village belonging to the college, in order to organise the local court assembly.¹⁹ What had been the definition of the provost's obligations towards the monastic community in the older text reappears in the village laws as the villages' obligation towards its monastic lord. Similarly, provisions in the village laws concerning taxes were taken from a thirteenth-century description of the tax collecting duties of the *cellerarius*, who administrated the college's possessions. Many of the remaining passages lean strongly on charters containing settlements of conflicts between the monastery and individual peasants, and the principles of transfer are similar in such cases.

By compiling provisions in this manner, the scribes of the college did not simply reproduce legal regulations, but applied them to new contexts. In the older versions contained in the Books of Statutes, the provisions regulated the distribution of rights between the individual members of the college or between their offices, such as the office of a provost or of a *cellerarius*. As the compilers transferred these contents into the village laws, they turned them into duties and rights of villages with reference to the monastic lord. This mode of compilation can be described as a territorialisation of rights.

The territorialisation of rights was related to fundamental changes in late medieval lordship. During the fourteenth century, local lordship was increasingly organised within a framework of territorial units, such as bailiwicks or villages.²⁰ In the sphere of administration, this territorialisation corresponds to

¹⁸ See Appendix I: Sections of the village law for Fluntern based on older documents contained in The Book of Statutes.

¹⁹ SCHWARZ, *Statutenbücher*, p. 13.

²⁰ HILDBRAND, *Herrschaft*; Philip ROBINSON, *Die Fürstabtei St. Gallen und ihr Territorium 1463-1529: Eine Studie zur Entwicklung territorialer Staatlichkeit* (St. Gall, 1995: *St. Galler Kultur und Geschichte* 24), pp. 98-113.

a growing importance of officers in charge of implementing lordship within a certain geographical area, such as the *villici* or stewards. These officers were responsible for the fulfilment of a village's duties towards its lord; they had to collect taxes from the villagers and check that the lords' regulations concerning the use of resources were respected, or that the peasants duly appeared at assemblies.

The oldest Latin versions of the Grossmünster College's village laws were probably primarily used to control such local officers. The texts were contained in heavy, prestigious codices and reading them required specific skills, due to their dependence on other legal documents, indicating that these texts were not supposed to be used outside the college's chancery. This was, however, exactly where local representatives of the Grossmünster lordship received their instructions and where they were called to account for their service. The particular case of the law for Höngg, with its colloquial style and its origin in a charter, may be somewhat different (and I will return to this point later). The other village laws are to a large extent new compositions of contents contained in older charters and statutes in the colleges' collections. Their wording came about by operations of copying, compiling and re-contextualising, whereas there is almost nothing to indicate their immediate origin in peasants' oral statements.

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From the decades around 1400 and throughout the fifteenth and early sixteenth centuries, the Latin texts in the Books of Statutes served as points of departure for establishing new German versions of the village laws. These German texts, as opposed to their Latin predecessors, appear in a great variety of documents in slightly differing versions. Some can be found on isolated pieces of parchment or as attachments to charters; others were inserted into small brochures containing copies of various documents concerning a single village, or even in specific compilations of the college's village laws.²¹ Excerpts of the German texts also appear in the records of courts arbitrating conflicts between competing lords.²² Obviously, these new versions were no longer intended to serve solely within the administrative body of the college, but were to be used in conflicts with competing lords, such as the City of Zurich. This not only called for translating the texts, but also for reworking them thoroughly.

²¹ STAZ A 97.4.10; A 97.4.11; G I 96, f. 250; G I 102; G I 103.

²² STAZ RM II 15, f. 62.

Only the text for the village of Höngg, the specific status of which is problematic, represents a literal translation from the Latin.²³ The other texts were not only translated, but underwent operations, which I shall refer to as archaisation and oralisation. What these operations implied will be illustrated in what follows with observations of a philological kind. To seize the over-all impact of the evolution of the texts since the end of the fourteenth century, we can content ourselves with looking more closely at a German compilation composed around the year 1500, which again gathers versions of all our seven village laws in a parchment booklet.²⁴

A number of passages in the new German versions do not seem to be based on older models. To a certain extent, such additions reflected fundamental developments in fifteenth-century rural society: On the one hand ever more provisions were added concerning the new communal forms of village organisation. For instance, the texts became more thorough about the duties of office-holders elected by the village community.²⁵ On the other hand, the college was obviously less interested in prescribing details of agricultural production than it had been in the fourteenth century. Instead, it expanded its control of an increasingly monetarized taxation.²⁶

Strangely, the German versions also contain many additions, which seem archaic in such a fifteenth-century context. To a much larger extent than the fourteenth-century versions, the new German versions describe face to face interactions between lords and peasants, often stressing the reciprocal nature of their relationship. For instance, the laws give colourful accounts of how canons personally participate in their dependants' vintage and describe lords and peasants exchanging gifts or sharing ritual meals.²⁷ Servile work is also precisely depicted in the younger German versions, although almost never mentioned in earlier Grossmünster documents. For instance, the German law for the village of Fluntern describes vividly how the peasants have to carry hay to the canons' homes to renew their beds and to clean the monastery's courtyard.²⁸

²³ A synoptic edition of both the Latin and the German versions can be found in: U. STUTZ, *Die Rechtsquellen von Höngg* (Basel, 1897), pp. 4-22.

²⁴ This compilation, too, is extant in two largely identical contemporary copies: STAZ G I 102 and G I 103.

²⁵ "Rechtsquellen für Zürich", *Zeitschrift für schweizerisches Recht* 4 (1859), at pp. 138 ff. and 141 ff.; cf. STAZ G I 102, f. 14r; G I 103, ff. 26r and 27v.

²⁶ For these developments, cf. A. ZANGGER, "Wirtschaft und Sozialstruktur auf dem Lande 1350-1530", in: *Geschichte des Kantons Zürich* 1, pp. 390-437.

²⁷ "Rechtsquellen für Zürich", p. 140; cf. STAZ G I 103, ff. 25v, 26v.

²⁸ "Rechtsquellen für Zürich", p. 143.

Of course, we cannot completely exclude that such rituals of exchange and forms of servility were still in use even at the end of the fifteenth century. But they were definitely no longer at the core of lord-peasant relationships in this period, and certainly not to a higher degree than in the fourteenth century, when they were far less prominent in the texts. The descriptions of soccage in Fluntern seem particularly strange. This village was situated less than a mile from the city wall. The majority of the farms and vineyards in Fluntern were rented to citizens of Zurich, who used leaseholds as a form of capital investment in local vine production. The college's tax lists name the leaseholders of Fluntern who, according to the *Weistum*, were expected to clean the college's courtyard. Many of the names prove to belong to leading members of the city council and to aristocrats such as the count of Toggenburg or the enormously rich Manesse family, who sponsored the famous German *Minnesang* collection.²⁹ It is difficult to imagine that these tenants would have performed the prescribed tasks themselves or even accepted that anybody ordered their servants to do so.

In addition to this archaisation, the texts underwent what can be labelled an oralisation. Oralisation first of all implies that the texts were entirely put into the vernacular but also into the form of *Weistümer* in the stricter sense of the word. There were added new introductory paragraphs stating that the subsequent provisions represent the customs that the peasants had recalled from their memory at the semi-annual village court assemblies. Even the rituals such as assemblies implied were now depicted in vivid colours.³⁰ To strengthen the impression that the texts represented accurate records of oral statements, the numerous dependencies between the village laws were concealed. Even in manuscripts containing several of the laws, all explicit links between the texts were removed. What had only been referred to in the Latin texts (e.g. in the form "*ut suprascriptum in Höngg*") was fully integrated in the German versions.³¹ Thus each village law presents itself as an independent text in the vernacular, with the peasants' oral statements as its only apparent origin.

Picturesque expressions, which increase in frequency in the latter German versions, also seem to be indicators of orality. Take the example of a new wording in the law for the village of Meilen. Its Latin version matter-of-factly states that at a peasant's death, the monastic lord had the right to seize his best animal. The wording implies that the college could not extend this claim to other

²⁹ Cf. "Kelleramtsurbar von 1333", in: *Urbare und Rödel der Stadt und Landschaft Zürich: Von den Anfängen bis 1336*, ed. W. SCHNYDER (Zurich, 1963), pp. 200: 14, 213: 17; for more noblemen, cf. *ibid.*, pp. 202: 16, 204: 25-26.

³⁰ "Rechtsquellen für Zürich", p. 89; cf. STAZ G I 102, f. 11v; G I 103, ff. 9r and 25v.

³¹ E.g. "Rechtsquellen für Zürich", p. 138 (cf. SCHWARZ, *Statutenbücher*, p. 153); STAZ G 102, f. 25-26 (cf. SCHWARZ, *Statutenbücher*, p. 150).

goods, in case a peasant had not possessed any valuable cattle. The German version illustrates this latter restriction in a wording reminiscent of fairy tales and says that the provost has to content himself with catching “the cock on the roof or the cat at the fireplace”, if there were no better animals he could carry away.³² And where the Latin versions give precise, numeric indications for quantities of goods, the German versions tend to paraphrase quantities by telling small stories. Thus the text for Albisrieden indicates the amount of bread that the steward was to receive from the college’s bakery in return for his service stating: each of the loaves has to be long enough for the steward to sit down, to prop it up on his ankle and to cut off above his knee a piece that makes a generous breakfast to his servant.³³ These new expressive descriptions bring the texts stylistically close to literary genres, which were conceived of as “popular” by contemporaries, such as *Volkslieder* or *Bauernschwänke*.

Through the selection of passages to be translated, the texts were further drawn to an oral style. Thus a striking number of paragraphs of the law for Höngg were translated and inserted into the texts for other villages. Many of these borrowings seem pointless in terms of legal content, because the provisions taken from the “wrong” Höngg text could have been found in the “right” Latin predecessor, although in a different wording.³⁴ But remember: the Latin text for Höngg was the only one to be written in a simple, colloquial style. Paradoxically, translating passages from this Latin text brought about German wordings that evoke more affinity to oral statements.³⁵

In sum, these operations reveal that most of what might be considered indicators that the texts originated in peasants’ oral statements were the result of well-aimed editing often derived from older texts. The oral style of the new German *Weistümer* came into being not under a tree out in the village where the peasants were convoked to the court assembly, but rather on the desk of a fifteenth-century compiler in the college’s chancery.

³² STAZ G I 102, f. 12v (cf. SCHWARZ, *Statutenbücher*, p. 162).

³³ STAZ G I 103, f. 26v.

³⁴ A good example of this are the provisions on the election of the forester (*lucarius*) in the law for the village of Albisrieden. Although this provision was also contained in the Latin Albisrieden text in the Books of Statutes from 1346, the translation in the German Albisrieden version is evidently based on the formulation in the Latin text for Höngg (SCHWARZ, *Statutenbücher*, pp. 153, 158; cf. STAZ G 103, f. 27r).

³⁵ I am following the notion of a conceptual orality (oral style or “language of nearness”). This must not be confused with orality (as opposed to the written), referring to the medium a statement has been “brought into”. This distinction was developed by P. KOCH and W. OESTERREICHER, “Sprache der Nähe, Sprache der Distanz: Mündlichkeit und Schriftlichkeit im Spannungsfeld von Sprachtheorie und Sprachgeschichte”, *Romanistisches Jahrbuch* 36 (1985), pp. 15–43.

Rewriting *Weistümer* to give them a more archaic and oral appearance was particularly important for texts to be used as evidence in legal conflicts between lords who claimed the same possessions. Quoting a *Weistum* of his village, a lord could argue that he not only claimed but actually had been exercising lordship in the village, that his lordship had been recognised by the local population, and that it originated in a vaguely defined past. It is not yet entirely clear how the peasants' real or imagined statements could be so important in conflicts between lords in many German speaking areas. Nor is it clear to what extent peasant statements were a legitimisation in a formally legal or broader social sense. The weight of such a legitimisation "from below" probably had to do with the absence or weakness of supra-regional power systems in the region, which elsewhere could impose order upon competing local lords "from above", such as royal administration. One should be careful not to overemphasise the democratic aspect of these strategies of legitimisation. What mattered to a lord when referring to a *Weistum* was the evidence that he or his predecessors and no others had been executing power in the village, regardless of the degree to which he had forced his claims upon the population.

The more rural and ancient a *Weistum's* origin seemed to be, the more useful it was in the context of negotiations between lords. A *Weistum* written in a colloquial style may have been particularly convincing in this respect. And the kind of idyllic and archaic passages, such as those the Grossmünster chantery newly added to the German versions of the village laws, were the most useful in conflicts between lords. They gave evidence of interactions between the lord and his peasants, which indicated local recognition or even consensus, such as sharing meals or agreeing orally on the villages' legal customs. And they insinuated that this lordship over the village went back to the good old times.

This at last explains the peculiar status of the text for Höngg, which in the Latin version was already a *Weistum* in the stricter sense and which served as a model for the new German texts. During the second third of the fourteenth century, when the Books of Statutes were compiled, the Grossmünster was in conflict with Habsburg *ministeriales* about possessions in Höngg. Thus the *Weistum* of Höngg probably already served in its first extant version the very purpose to which the other texts were later adapted. In the other villages, the Grossmünster did not face serious competing claims to lordship until the fifteenth century, when the City of Zurich began to aspire to establishing territorial power in its surroundings. Only then was it necessary to rewrite texts, which had hitherto mainly been used to control the college's own officers in the villages.

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In closing, I would like to draw some conclusions from these few examples. The popular and colloquial style and the expressive ways in which rituals of rural lordship are described in most of the Grossmünster's village laws do not result directly from the texts' origin in an oral and traditional society. Most of these elements were brought into being by compiling and rewriting older versions. In this respect, the development of the village laws runs counter to what theories about a close connection between growing literacy and modern legislation would suggest. The older fourteenth-century versions represent far more "modern" statutes than their successors in the fifteenth century, which introduce "traditional" rural legislation.

This development can best be explained by referring to changes in the use of village laws. A main motivation for writing and rewriting these texts was to adapt legal provisions in order to apply them to new social spheres. In the fourteenth century, a first mode of compilation, which I labelled as territorialisation of rights, brought about village laws that were primarily used to control the monastery's officers on the village level. Only in the fifteenth century did most of these texts turn into *Weistümer* of some sort. This was the result of a second mode of compilation that implied what I have described as archaization and oralization processes. To be used in conflicts with competing lords, the village laws had to evoke greater closeness to peasant enquiries and thus become suggestive of a lordship that had been executed from time immemorial.

Tracing the development of these rural legal texts reveals that what has been considered their oral and archaic elements are largely elements of fiction. According to a medieval understanding, this type of fiction was probably not so much identified with forgery, but was rather comparable to inventions of tradition. Like noble genealogies or narratives about donations to religious houses, the new versions of the *Weistümer* combine more or less fictitious contents with a claim of presenting adequate representations of the past. To a reader of the nineteenth or twentieth century these inventions of tradition are so attractive because they evoke pictures of the past that seem to belong to an early form of social or cultural history. The traditions invented here were neither concerned with time-honoured institutions nor with the genealogies or deeds and feats of great men, but with day-to-day forms of cooperation, negotiation and argument within the framework of rural lordship and village organisation. The newer versions of the village laws evoke a slightly idealised picture of a traditional society unaffected by literacy. A picture of a society in which rituals expressive of closeness, consensus, and trust between lords and peasants still set the tone.

In the fifteenth century, such a picture may have obtained some of its trustworthiness by relating to contemporary complaints about a society, in which legalism, mistrust and rebelliousness were seen as being about to gain ground.³⁶

Jacob Grimm and his successors in German social and legal history believed that they found age-old mechanisms of German social organisation in *Weistümer*, most of which were written in the fifteenth century and later. It seems that what they discovered could to a large extent be pictures of the past as it was imagined and fictionalised at the end of the Middle Ages. This would not be the first case where modern historiography appears to unconsciously depend upon an earlier period's own imageries of the past. Even recently, historical research into the twelfth and thirteenth centuries has been strongly inspired by some fictitious narratives about the High Middle Ages established by fifteenth-century chroniclers.³⁷

We ought to consider the possibility that today's historical discussions about the characteristics of the medieval oral society could be involuntarily influenced by late medieval imageries about the good old times. In today's discussions too, oral society is often associated with notions similar to those the scribes of the fifteenth century expressed by way of rewriting village laws: with nearness and a strong reliance on consensual solutions and the importance of rituals. The poetics of writing about an oral society seem to have a long tradition that is still widely unexplored. And, more generally, a sharpened awareness of the poetics of describing societies represents a good reason to review Jacob Grimm's attempt to relate law and literature. He left us with the idea that the two of them had risen from the same bed. But we are still trying to find out how they got in there and what they were up to.

³⁶ Cf., e.g. A. ESCH, "Wahrnehmung sozialen und politischen Wandels in Bern an der Wende vom Mittelalter zur Neuzeit", in: *Sozialer Wandel im Mittelalter: Wahrnehmungsformen, Erklärungsmuster, Regelungsmechanismen*, ed. J. MIETHKE and K. SCHREINER (Sigmaringen, 1994), pp. 177-193.

³⁷ Among the most prominent examples of this are the myths about William Tell and the foundation of the Swiss Confederation. Cf. G.P. MARCHAL, "Die 'Alten Eidgenossen im Wandel der Zeiten': Das Bild der frühen Eidgenossen im Traditionsbewusstsein und in der Identitätsvorstellung der Schweizer vom 15. bis ins 20. Jahrhundert", in: *Innerschweiz und frühe Eidgenossenschaft*, ed. by the Historischer Verein der fünf Orte (Olten, 1990), pp. 11-233.

Appendix I

Sections of the Village Law for Fluntern Based on
Older Documents Contained in the Books of Statutes

Quotations from models are set in *italics*.

MODELS

BEGINNING SECTION OF THE VILLAGE LAW FOR FLUNTERN

☛ Provost's Duties³⁸

De iuribus et iurisdicione ville in Fluntrein nostre ecclesie pertinentibus. In nomine domini amen.

Sciendum est, quod prepositus Thuricensis nomine ecclesie prepositure sue in banno, territorio et districtu ville in Fluntrein habet omnem iurisdicionem et merum imperium in homines ac possessiones ac incolas eiusdem ville, quam per se et alios poterit exercere, iusticia mediante. Et omni anno intrante maio et intrante auctumpno per se vel alium in curia cellerarii in Fluntrein debet presidere et habere placita vernalia et auctumpnalia et illa preintimare debet per missum suum specialem ad octo dies et illis placitis debet tantum iudicare et cognoscere de rebus immobilibus, que iure hereditario seu proprietatis tytulo possidentur, et in sequentibus terminis de rebus mobilibus, violenciis et iniuriis, maleficiis et personalibus accionibus et tales acciones terminari debent tercio termino, nisi prepositus vel partes fuerint causa legitima impediti. Et si quis agere vult pro rebus immobilibus, intentare debet accionem primo termino maii; quod si non facit, ipsam inchoare non poterit nisi primo termino auctumpni; quod si eciam non fecerit, iterum expectare debet usque ad maium. Sic servari debet usque in infinitum et interim reus manere debet quietus in possessione rei vendicande per actorem.

☛ Provost's Duties³⁹

Debent eciam eisdem placitis iura ville villanorum curie in Fluntrein et prepositi Thuricensis sollempniter publicari.

Et quicumque, sive sit villanus, sive extraneus, habet in latitudine sive in longitudine possessionum immobilium, que iure hereditario a prepositura Thuricensi possidentur, septem pedes, eisdem placitis comparere debet in Fluntrein coram preposito vel vices eius gerente et villani interesse debent publicacioni iurium a pricipio usque ad finem; sed extranei venisse debent ante finem publicacionis et absentes mulctari debent pena trium solidorum denariorum Thuricensium, nisi causa racionabili valeant excusari

☛ Cellarius' Duties⁴⁰

et pro ista emenda et pro omni censu, in quo villani sunt ecclesie obligati, pignori debent et pignora per octo dies servari debent in curia cellerarii sine suo preiudicio et post octo dies vendi debent et superfluum debet restituti debitori. Sed si non potest cum illius pig-

noris precio satisfacere addat aliud pignus, de quo idem fieri debet usque ad plenam satisfaccionem. Et si quis iniuriose dare pignus recusaverit vel nuncium prepositi accipere prohibuerit, emendabit preposito cum tribus libris den. tamquam preposito et tanquam advocato cum 6 libris den. De pignoribus censuum fiat idem, quod superscriptum est in curia Hönge ...

³⁸ SCHWARZ, *Statutenbücher*, p. 13.

³⁹ SCHWARZ, *Statutenbücher*, p. 13.

⁴⁰ Cf. “Kelleramtsurbar von 1333”, pp. 197ff.

